

SECURITIES AND EXCHANGE COMMISSION

FORM 425

Filing under Securities Act Rule 425 of certain prospectuses and communications in connection with business combination transactions

Filing Date: **2021-02-08**
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([HTML Version](#) on [secdatabase.com](#))

SUBJECT COMPANY

Neos Therapeutics, Inc.

CIK: [1467652](#) | IRS No.: [270395455](#) | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **425** | Act: **34** | File No.: [001-37508](#) | Film No.: [21601633](#)
SIC: **2834** Pharmaceutical preparations

Mailing Address

2940 N. HIGHWAY 360
SUITE 400
GRAND PRAIRIE TX 75050

Business Address

2940 N. HIGHWAY 360
SUITE 400
GRAND PRAIRIE TX 75050
972.408.1360

FILED BY

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 8, 2021 (February 5, 2021)**

NEOS THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37508
(Commission File No.)

27-0395455
(IRS Employer Identification No.)

**2940 N. Highway 360
Grand Prairie, TX 75050**

(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: **(972) 408-1300**

Not applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, par value \$0.001 per share	NEOS	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

As previously disclosed, on December 10, 2020, Aytu BioScience, Inc. (“Aytu”), Neutron Acquisition Sub, Inc., a wholly owned subsidiary of Aytu and Neos Therapeutics, Inc. (the “Company” or “Neos”) entered into an Agreement and Plan of Merger (the “Merger Agreement”), whereby Neutron Acquisition Sub, Inc. will merge with and into Neos, with Neos surviving as a wholly owned subsidiary of Aytu (the “Merger”). Completion of the Merger is anticipated to occur as early as the end of the first quarter of 2021 and remains subject to customary closing conditions, including the adoption of the Merger Agreement by a majority of the holders of the outstanding shares of Neos common stock and the approval of the issuance of Aytu common stock by a majority of the votes cast by Aytu stockholders on the matter, and certain other conditions. The details of the Merger and the Merger Agreement were previously disclosed in, and the Merger Agreement was filed with, the Company’s Form 8-K filed on December 11, 2020. Capitalized terms not defined herein shall have the meanings ascribed to them in the Merger Agreement.

In connection with the execution of the Merger Agreement, Neos concurrently entered into a commitment letter for an unsecured convertible note (the “Promissory Note”) for Aytu BioScience, Inc. (“Aytu”) to provide financing to Neos in an aggregate amount of up to \$5,000,000, subject to receipt of approval from The Nasdaq Stock Market (“Nasdaq”) with respect to the convertible note and the transactions contemplated therein.

Following receipt of the aforementioned approval from Nasdaq, on February 8, 2021, the Company issued the Promissory Note to Aytu without incurring any indebtedness thereunder. If indebtedness is incurred, interest will accrue on any principal amount outstanding under the note at a rate of 6.0% per annum, compounding monthly beginning in February 2021. If an event of default has occurred and is continuing, the interest rate then in effect will be increased by 2.0% per annum, and all overdue obligations under the note will bear interest at the interest rate in effect at such time plus the additional 2.0% per annum. Aytu’s rights under the note, including rights to payment, are subordinated to the rights of Neos’s existing senior lenders. The maturity date of the note is the earlier of the acceleration of the obligations evidenced thereby and November 7, 2022.

If drawn down on, the convertible note will be cancelled in the event the Merger is consummated. If the Merger is not consummated and the Merger Agreement is terminated, at any time beginning 30 days following such termination, Aytu will have the right to elect to convert principal and accrued interest amounts outstanding under the note at a conversion price equal to the greater of \$0.50 per Neos share or 90% of Neos’ then current share price (calculated based on a volume weighted average price per share for the thirty (30) trading days immediately preceding). Aytu’s ability to convert the note is subject to a customary exchange cap, under which no shares may be issued by Neos to the extent such issuance (together with all previous issuances under the note) would exceed 19.9% of Neos’s outstanding common stock as of the date the note is issued. Alternatively, at Aytu’s option, it may acquire shares in excess of such exchange cap if it elects to increase the conversion price with respect to any given conversion such that Nasdaq would deem such conversion price to be at least the Minimum Price for purposes of Nasdaq listing Rule 5635(d). In addition, Aytu may not acquire common stock upon conversion of the note to the extent such acquisition would result in Aytu’s beneficial ownership of Neos’s common stock exceeding 9.985% of Neos’s total outstanding shares of common stock at such time.

The issuance of the convertible note occurred, and the conversion of the shares of Neos’s common stock thereunder will occur, as a private placement of securities. As a result, the shares issuable upon conversion of the note may be restricted from resale unless such shares have been registered for resale under the Securities Act of 1933, as amended (the “Securities Act”) or an exemption exists for such resale.

Concurrently with the issuance of the Promissory Note, on February 8, 2021, Neos and Aytu entered into a registration rights agreement (the “Registration Rights Agreement”) to register the resale of the conversion shares under the notes. Under the Registration Rights Agreement, within 30 days from the termination of the Merger Agreement for any reason, Neos will use best efforts to register the conversion shares for resale and cause such registration statement to be declared effective by the Securities and Exchange Commission (the “SEC”) within 75 days following the filing of such registration statement. If the registration statement is not declared effective by such deadline or its effectiveness not maintained, Neos will pay Aytu an additional amount of its common stock (or cash if such issuance of common stock is not permitted under

Nasdaq rules) equal to 3% of the common stock covered under the registration statement for each 30-day period the registration statement is not declared effective after the deadline. In addition, if the registration

statement is not effective or available to use prior to such time that Aytu can sell all of the common stock covered by the registration statement under Rule 144 without regard to volume limitations, Neos will pay Aytu an additional amount of common stock (or cash if such issuance common stock is not permitted under Nasdaq rules) equal to 3% of the remaining unsold amount of common stock covered under the registration statement for each 30-day period that the registration statement is not available to use. The Registration Rights Agreement also includes a covenant prohibiting Neos from issuing equity or convertible securities from the date the convertible note is issued until 30 days after the date the registration statement is declared effective, subject to certain exceptions.

In addition, in the event that Neos draws down on the convertible note, the Exchange Ratio will be adjusted downward by an amount equal to 0.00011 for every \$100,000 of bridge financing funded by Aytu under the convertible note.

The foregoing description of the Promissory Note and the Registration Rights Agreement is not complete and is qualified in its entirety by reference to the Promissory Note, which is filed as Exhibit 10.1 hereto, and the Registration Rights Agreement, which is filed as Exhibit 10.2 hereto, both of which are incorporated by reference into this Item 1.01.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure regarding the Promissory Note contained in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

Item 3.01 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

As previously disclosed, on June 2, 2020, Neos received a letter (the “Letter”) from the Listing Qualifications Department (the “Staff”) of Nasdaq indicating that the closing bid price of the Company’s common stock had, for 30 consecutive business days preceding the date of the Letter, been below the \$1.00 per share minimum required for continued listing on The Nasdaq Global Market under Nasdaq Listing Rule 5450(a)(1) (the “Minimum Bid Price Rule”). In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company was provided until December 28, 2020 to regain compliance, reflecting a 180-day compliance period and any temporary relief periods afforded by Nasdaq pursuant to its April 16, 2020 announcement.

On December 29, 2020, Neos received a notice (the “Notice”) from the Listing Qualifications Department of Nasdaq stating that the Company had failed to regain compliance with the minimum \$1.00 closing bid price required by the Minimum Bid Price Rule prior to December 28, 2020 as required by Nasdaq’s Letter. Upon receipt of the Notice, the Company promptly requested a hearing before a Hearings Panel to appeal the determination, which stayed the suspension of Neos’ securities and the filing of the Form 25-NSE pending a decision by the Hearings Panel.

On February 4, 2021, Neos conducted its hearing before the Nasdaq Hearings Panel. On February 5, 2021, the Hearings Panel granted Neos’ request to continue its listing on Nasdaq during the pendency of the Merger or until June 28, 2021. To remain listed on Nasdaq beyond such date, Neos must demonstrate compliance with the Minimum Bid Price Rule on or before such date.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure regarding the Promissory Note contained in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 3.02.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
10.1	Unsecured Convertible Promissory Note, by and between Neos and Aytu.
10.2	Registration Rights Agreement, by and between Neos and Aytu.
10.3	Subordination Agreement, by and among Neos, Aytu, Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P.
10.4	Subordination Agreement, by and among Neos, Aytu, Neos Therapeutics Brands, LLC, Neos Therapeutics, LP, Neos Therapeutics Commercial, LLC, Pharmafab Texas, LLC and Encina Business Credit, LLC.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NEOS THERAPEUTICS, INC.

Date: February 8, 2021

By: /s/ Richard I. Eisenstadt

Richard I. Eisenstadt
Chief Financial Officer

Exhibit 10.1

THIS INSTRUMENT AND THE INDEBTEDNESS EVIDENCED HEREBY, AND THE RIGHTS AND REMEDIES OF THE HOLDER OF THIS INSTRUMENT, ARE SUBORDINATED TO THE REPAYMENT AND FULL PERFORMANCE OF THE COMPANY'S INDEBTEDNESS AND OTHER OBLIGATIONS UNDER (I) THAT CERTAIN FACILITY AGREEMENT, DATED AS OF MAY 11, 2016 (AS AMENDED, RESTATED, SUPPLEMENTED AND OTHERWISE MODIFIED FROM TIME TO TIME, THE "SENIOR FACILITY AGREEMENT"), BY AND AMONG THE COMPANY AND THE LENDERS FROM TIME TO TIME PARTY THERETO (THE "SENIOR FACILITY LENDERS") AND (II) THAT CERTAIN LOAN AND SECURITY AGREEMENT, DATED AS OF OCTOBER 2, 2019 (AS AMENDED, RESTATED, SUPPLEMENTED AND OTHERWISE MODIFIED FROM TIME TO TIME, THE "ABL AGREEMENT"), BY AND AMONG THE COMPANY, CERTAIN AFFILIATES OF THE COMPANY PARTY THERETO AND THE LENDERS FROM TIME TO TIME PARTY THERETO (THE "ABL LENDERS") AND ENCINA BUSINESS CREDIT, LLC, AS AGENT FOR SUCH ABL LENDERS; AND THE HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, SHALL BE BOUND BY THE PROVISIONS HEREOF AND THE PROVISIONS OF (A) THAT CERTAIN SUBORDINATION AGREEMENT DATED AS OF THE DATE HEREOF AMONG THE COMPANY, THE HOLDER HEREOF AND THE SENIOR FACILITY LENDERS (AS AMENDED, RESTATED, SUPPLEMENTED AND OTHERWISE MODIFIED FROM TIME TO TIME, THE "SENIOR FACILITY SUBORDINATION AGREEMENT") AND (B) THAT CERTAIN SUBORDINATION AGREEMENT DATED AS OF THE DATE HEREOF, AMONG THE COMPANY, THE HOLDER HEREOF AND THE ABL LENDERS (AS AMENDED, RESTATED, SUPPLEMENTED AND OTHERWISE MODIFIED FROM TIME TO TIME, THE "ABL SUBORDINATION AGREEMENT" AND, TOGETHER WITH THE SENIOR FACILITY SUBORDINATION AGREEMENT, THE "SUBORDINATION AGREEMENTS").

UNSECURED CONVERTIBLE PROMISSORY NOTE

Issue Date: February 8, 2021

Principal: Up to U.S.
\$5,000,000.00

FOR VALUE RECEIVED, NEOS THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), hereby promises to pay to **AYTU BIOSCIENCE, INC.,** a Delaware corporation, or its permitted registered assigns (collectively, the "**Holder**"), the Principal (as defined below) in the amount of up to Five Million U.S. dollars (\$5,000,000.00) on the terms and conditions set forth in this Note (as defined below), which has been issued by the Company pursuant to, and in accordance with, the terms of that certain Agreement and Plan of Merger dated December 10, 2020 by and among the Company, Holder and Argon Merger Sub, Inc., a Delaware corporation, (as amended, supplemented or otherwise modified from time to time, in accordance with its terms, the "Merger Agreement"). The Company hereby promises to pay accrued and unpaid

Interest and premium, if any, on the Principal on the dates, at the rates and in the manner provided herein.

1. Definitions.

(a) Certain Defined Terms. For purposes of this Note, the following terms shall have the following meanings:

(i) **“Act of Bankruptcy”** means, with respect to any Person, if (i) the Person shall (1) be or become insolvent, or (2) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the Person or entity or of all or a substantial part of the Person’s or entity’s property, or (3) commence a voluntary case under any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding under the laws of any jurisdiction, or (4) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or (5) the Person’s inability to pay the Person’s debts as they mature, or (6) make an assignment for the benefit of the Person’s creditors; or (ii) a proceeding or case shall be commenced, without the application or consent of the Person, and which is not dismissed within 90 days after such commencement, in any court of competent jurisdiction, seeking (1) the liquidation, reorganization, dissolution, winding up or the composition or adjustment of debts of the Person or entity, (2) the appointment of a trustee, receiver, custodian or liquidator or the like of the Person or entity, or of all or any substantial part of the Person’s property, or (3) similar relief in respect of the Person under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts.

(ii) **“Business Day”** means any day other than Saturday, Sunday or any other day on which commercial banks in New York, New York are authorized or required by law to close.

(iii) **“Change of Control”** means (a) any “Person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) other than the holders of the Company’s voting stock on the date the Merger Agreement is executed and delivered by the parties thereto or their Controlled Investment Affiliates, is or shall at any time become the “beneficial owner” (as defined in Rule 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of greater than 50% of the voting interest in the Company’s stock, (b) a sale of substantially all of the assets of the Company and its subsidiaries, or (c) the occurrence of a “Change of Control”, “Change in Control”, “Fundamental Change” or concepts of similar import under the Senior Facility Agreement or the ABL Agreement; provided, however, in no event shall a “Change of Control” include or be a reference to, or be deemed to have occurred upon, the consummation of the transactions contemplated under the Merger Agreement on the Closing Date (as defined therein).

(iv) **“Controlled Investment Affiliates”** means as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies.

(v) **“Common Stock”** means the common stock of the Company, \$0.001 par value per share.

(vi) **“Conversion Amount”** means the aggregate amount of Principal and Interest to be converted, which as of the Conversion Date, will be 100% of Principal as of such date, together with all accrued and unpaid Interest thereon as of such date.

(vii) **“Conversion Date”** means the date of delivery via facsimile or electronic mail of a Conversion Notice.

(viii) **“Conversion Price”** means, as of any Conversion Date, the greater of (i) \$0.50, subject to adjustment for any Stock Event that occurs after the date hereof (the **“Floor Price”**), and (ii) 90% of the arithmetic average of the Volume Weighted Average Prices per Share on each of the thirty (30) Trading Days immediately preceding the Conversion Date (the **“Measurement Period”**); provided, that in the event that a stock split, stock combination, reclassification, payment of stock dividend, recapitalization or other similar transaction of such character that the Shares shall be changed into or become exchangeable for a larger or small number of Shares (a **“Stock Event”**) is consummated during the Measurement Period, the Volume Weighted Average Price for all Trading Days during the Measurement Period prior to the effectiveness of the Stock Event shall be appropriately adjusted to reflect such Stock Event.

(ix) **“Conversion Shares”** means fully paid and nonassessable Shares issuable upon conversion of the Note in accordance with Section 3.

(x) **“Delisting Event”** means an event which shall be deemed to have occurred if the Shares cease to be listed, traded or publicly quoted on the Principal Market on which Shares are listed as of such date, and shall continue until such Shares are relisted or requoted on either the New York Stock Exchange, the NYSE American, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or, in each case, any successor thereto (each, a **“Principal Market”**).

(xi) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the SEC thereunder.

(xii) **“Interest”** means any interest (including any default interest) accrued on the Principal pursuant to the terms of this Note.

(xiii) **“Maturity Date”** shall mean the earlier of (i) acceleration of the obligations evidenced hereby and (ii) November 7, 2022.

(xiv) **“Market Disruption Event”** means, with respect to any Trading Day and any security, (a) a failure by the Principal Market to open for trading during its entire regular trading session, (b) the occurrence or existence prior to 1:00 p.m., New York City time, on such day for such securities for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant securities exchange or otherwise) in such securities or in any options, contracts or future contracts relating to such securities, or (c) to the extent **“Volume Weighted Average Price”** is determined in accordance with clause (b) of



the definition thereof, the suspension of trading for the one-half hour period ending on the scheduled close of trading on such day (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in such securities.

(xv) “**Note**” means this Unsecured Convertible Promissory Note (including all unsecured convertible promissory notes issued in exchange herefor or, upon transfer or replacement hereof, and as any of the foregoing may be further amended, restated, supplemented or otherwise modified from time).

(xvi) “**Person**” means and includes any natural person, individual, partnership, limited partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

(xvii) “**Principal**” means the outstanding principal amount of this Note as of any date of determination.

(xviii) “**Principal Market**” shall have the meaning set forth in the definition of Delisting Event above.

(xix) “**Reg Rights Side Letter**” means the letter agreement, dated as of December 10, 2020 between Holder and the Company and substantially in the form attached hereto as Exhibit B.

(xx) “**Register**” means the register for the recordation of the name and address of the Holder of this Note and the Principal (and stated Interest) owing to such Holder from time to time.

(xxi) “**SEC**” means the United States Securities and Exchange Commission.

(xxii) “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

(xxiii) “**Shares**” means shares of Common Stock.

(xxiv) “**Trading Day**” means any day on which the Common Stock is traded for any period on the Principal Market; provided, that Trading Day shall not include any Trading Day on which there is a Market Disruption Event.

(xxv) “**Volume Weighted Average Price**” for any security as of any Trading Day means (a) the volume weighted average sale price of such security on the principal U.S. national or regional securities exchange on which such security is traded as reported by Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and hereinafter designated by Holder and the Company (“**Bloomberg**”), or (b) if no volume weighted average sale price is reported for such security, then the closing price per share of such security as reported by Bloomberg, or, if no closing price per share is reported for such security by Bloomberg, the average of the last bid and last ask price (or if more than one in either case,

the average of the average last bid and average last ask prices) on such Trading Day as reported in the composite transactions for the principal U.S. national or regional securities exchange on which such security is traded. If the security is not listed for trading on a U.S. national or regional securities exchange on the relevant Trading Day, then the Volume Weighted Average Price will be the average of the mid-point of the last bid and last ask prices of the security in the over-the-counter market on the relevant Trading Day as reported by the OTC Markets Group, Inc. or similar organization. If the Volume Weighted Average Price cannot be calculated for such security on such date in the manner provided above, the Volume Weighted Average Price shall be the fair market value as mutually determined by the Company and the holders of a majority in interest of the Notes being converted (based on the Principal amount being converted by each such holder) for which the calculation of the Volume Weighted Average Price is required in order to determine the Conversion Price of such Notes. Volume Weighted Average Price will be determined without regard to after-hours trading or any other trading outside of the regular trading hours.

2. Multi-Advances; Principal & Interest; Payments.

(a) Advances. From time to time upon not less than 10 days' prior written notice (which may be by electronic mail) by the Company to Holder and provided that the aggregate amount of all advances made hereunder does not exceed \$5,000,000, the Company may request, and Holder shall advance, such sums as requested by the Company; provided that (i) no Event of Default has occurred and is continuing, (ii) no "Event of Default", as defined under each of the Senior Facility Agreement and the ABL Agreement, has occurred and is continuing (iii) the Merger Agreement has not been terminated in accordance with its terms and (iv) any advance is in an amount of not less than \$100,000 and in \$100,000 increments thereof.

(b) Interest & Principal. Interest shall accrue on the Principal at the rate of 6.0% per annum, calculated on the basis of the actual number of days elapsed in a 365 day year, and shall compound monthly and be added to the Principal on the first day of each month beginning February 1, 2021, and the first day of each month thereafter, and shall be due and payable with the Principal. The Company acknowledges that this addition to Principal will result in the total outstanding principal amount of indebtedness evidenced by this Note exceeding the face amount of this Note. If an Event of Default has occurred and is continuing, the interest rate then in effect will be increased by 2.0% per annum (the "**Default Margin**") and all overdue obligations under this Note will bear interest at the interest rate in effect at such time plus the Default Margin. Subject to the provisions of the Subordination Agreements, on the earlier to occur of acceleration of this Note and the Maturity Date, all Principal plus all accrued and unpaid Interest shall be due and payable.

(c) Optional Prepayments. Subject to the provisions of the Subordination Agreements, the Company may prepay at any time and from time to time, all or any portion of the balance remaining on this Note, without premium or penalty.

(d) Mandatory Prepayments. Subject to the provisions of the Subordination Agreements, upon payment in full in cash of all obligations under each of the Senior Facility Agreement and the ABL Agreement and termination of all commitments to lend thereunder, the Company shall repay the entire balance remaining under this Note on the first

Business Day following the date each of the Senior Facility Agreement and the ABL Agreement has been “Paid in Full” (as such term or any similar term is defined in the applicable Subordination Agreement).

3. Conversion Rights. The Principal and accrued and unpaid Interest may be converted, in whole but not in part, into Shares on the terms and conditions set forth in this Section 3.

(a) Conversion at Option of the Holder. At any time beginning 30 days after termination of the Merger Agreement, subject to (i) the 9.985% Cap (as defined below), and (ii), the Exchange Cap (as defined below), the Holder shall be entitled to convert all or any part of the outstanding Principal and accrued Interest, as of the date of the Conversion Notice therefor delivered in accordance with this Section 3, into Conversion Shares in accordance with this Section 3 at the Conversion Rate (as defined in Section 3(b)). The Company shall not issue any fraction of a Share upon any conversion. If the issuance would result in the issuance of a fraction of a Share, then the Company shall round such fraction of a Share up or down to the nearest whole share (with 0.5 rounded up).

(b) Conversion Rate. The number of Conversion Shares issuable upon a conversion of any portion of this Note pursuant to Section 3 shall be determined according to the following formula (the “**Conversion Rate**”):

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

(c) Mechanics of Conversion. The conversion of Principal and Interest (“**Conversion**”) shall be conducted in the following manner:

(i) Holder’s Delivery Requirements. To convert a Conversion Amount into Conversion Shares pursuant to Section 3(a) above on any date, the Holder shall transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m. New York City time on such date, a copy of a conversion notice in the form attached hereto as Exhibit A (the “**Conversion Notice**”) to the Company (Attention: Richard Eisenstadt, Fax: (972) 408-1143, Email: reisenstadt@neostx.com).

(ii) Company’s Response. Subject to Section 3(g)(ii), upon receipt or deemed receipt by the Company of a copy of a Conversion Notice, the Company (I) shall promptly send, via electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Company’s designated transfer agent (the “**Transfer Agent**”), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein, and (II) on or before the second (2nd) Business Day following the date of receipt or deemed receipt by the Company of such Conversion Notice (or, if earlier, the end of the then standard settlement period for U.S. broker-dealer securities transactions) (the “**Share Delivery Date**”), (A) provided the Holder (or its designee) is eligible to receive such Conversion Shares through The Depository Trust Company (“**DTC**”) (which shall include any time at which the Unrestricted Conditions (as defined below) are satisfied), credit such aggregate number of Conversion Shares to which the Holder shall be entitled to the

Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian ("DWAC") system, or (B) if the foregoing shall not apply, issue and deliver to the address as specified in the Conversion Notice, a stock certificate, registered in the name of the Holder or its designee, in each case, for the number of Conversion Shares to which the Holder shall be entitled. The Conversion Shares will be free-trading, and freely transferable, and will not contain a legend (or stop transfer instructions) restricting the resale or transferability of the Conversion Shares if any of the Unrestricted Conditions (as defined below) is met.

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Conversion Price or the arithmetic calculation of the Conversion Rate, the Company shall instruct the Transfer Agent to issue to the Holder the number of Conversion Shares that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via electronic mail within two (2) Business Days of receipt or deemed receipt of the Holder's Conversion Notice or other date of determination. If the Holder and the Company are unable to agree upon the determination of the Conversion Price or arithmetic calculation of the Conversion Rate within one (1) Business Day of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Company shall promptly (and in any event within two (2) Business Days) submit via electronic mail (A) the disputed determination of the Conversion Price to an independent, reputable investment banking firm agreed to by the Company and the Holder, or (B) the disputed arithmetic calculation of the Conversion Rate to the Company's independent registered public accounting firm, as the case may be. The Company shall direct the investment bank or the accounting firm, as the case may be, to perform the determination or calculation and notify the Company and the Holder of the results no later than two (2) Business Days from the time it receives the disputed determination or calculation. Such investment bank's or accounting firm's determination or calculation, as the case may be, shall be binding upon all parties absent manifest error. The fees and expenses of such investment bank or accountant shall be paid by the Company. Notwithstanding the existence of a dispute contemplated by this paragraph, if requested by the Holder, the Company shall issue to the Holder the Conversion Shares not in dispute in accordance with the terms hereof.

(iv) Record Holder. The Person or Persons entitled to receive the Conversion Shares issuable upon a Conversion shall be treated for all purposes as the legal and record holder or holders of such Shares upon delivery by the Holder of the Conversion Notice, or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 3(c)(iii), the first Business Day after the resolution of such *bona fide* dispute.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If by the Share Delivery Date, the Company shall fail to issue the Conversion Shares and deliver a certificate to the Holder for, or credit the Holder's or its designee's balance account with DTC with, the number of Conversion Shares, as applicable, (free of any restrictive legend, provided any of the Unrestricted Conditions is satisfied) (a "**Delivery Failure**"), then, in addition to all other available remedies that the Holder may pursue hereunder and under the Merger Agreement, the Company shall pay

additional damages to the Holder for each day after the Share Delivery Date such conversion is not timely effected in an amount equal to two percent (2%) of the product of (I) the number of Conversion Shares not issued to the Holder or its designee on or prior to the Share Delivery Date and to which the Holder is entitled and (II) the Volume Weighted Average Price of the Common Stock on the Share Delivery Date (such product is referred to herein as the “**Share Product Amount**”).

Alternatively in lieu of the foregoing damages, subject to Section 3(c)(iii), at the written election of the Holder made in the Holder’s sole discretion, if, on or after the applicable Conversion Date, the Holder purchases (in an open market transaction or otherwise) Shares to deliver in satisfaction of a sale by such Holder of Conversion Shares that such Holder anticipated receiving from the Company (such purchased Shares, “**Buy-In Shares**”), the Company shall be obligated to promptly pay to such Holder (in addition to all other available remedies that the Holder may otherwise have), 110% of the amount by which (A) such Holder’s total purchase price (including brokerage commissions, if any) for such Buy-In Shares exceeds (B) the net proceeds received by such Holder from the sale of the number of Conversion Shares such Holder was entitled to receive but had not received on the Share Delivery Date. If the Company fails to pay the additional damages set forth in this Section 3(c)(v)(A) within five (5) Business Days of the date incurred, then the Holder entitled to such payments shall have the right at any time, so long as the Company continues to fail to make such payments, to require the Company, upon written notice, to immediately issue, in lieu of such cash damages, the number of Shares equal to the quotient of (X) the aggregate amount of the damages payments described herein divided by (Y) the Conversion Price specified by the Holder in the Conversion Notice. Amounts payable pursuant to this Section 3(c)(v) shall be paid on or before the fifth (5th) Business Day of each month following a month in which such payment accrued.

(B) Void Conversion Notice. If for any reason the Holder has not received all of the Conversion Shares prior to the tenth (10th) Business Day after the Share Delivery Date with respect to a Conversion (a “**Conversion Failure**”), then the Holder, upon written notice to the Company (a “**Void Conversion Notice**”), may void its Conversion with respect to, and retain or have returned, as the case may be, any portion of Principal that has not been converted pursuant to the Holder’s Conversion Notice; provided, that the voiding of the Holder’s Conversion Notice shall not affect the Company’s obligations to make any payments that have accrued prior to the date of such notice pursuant to Section 3(c)(v)(A) or otherwise.

(vi) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon Conversion or repayment of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company.

(d) Taxes. The Company shall pay any and all taxes (excluding income taxes, franchise taxes or other taxes levied on gross earnings, profits or the like of the Holder) that may be payable with respect to the issuance and delivery of Conversion Shares upon the conversion of this Note, unless the tax is due because the Holder requests any Conversion Shares to be issued in a name other than the Holder’s name, in which case the Holder will pay that tax.

(e) Legends.

(i) Restrictive Legend. The Holder understands that until such time as the Conversion Shares have been registered under the Securities Act as contemplated by the Reg

Rights Side Letter or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Conversion Shares, as applicable, may bear a restrictive legend in substantially the following form (and a stop-transfer order consistent therewith may be placed against transfer of the certificates for such securities):

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAW. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER SECTION 4(a)(7) OF THE SECURITIES ACT OR APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED “4(a)(1) AND A HALF SALE.” NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(ii) Removal of Restrictive Legends. The certificates evidencing the Conversion Shares shall not contain or be subject to (and the Holder shall be entitled to the removal of) any legend or stop transfer instructions restricting the transfer thereof (including the legend set forth above in subsection 3(e)(i)): (A) while a registration statement covering the resale of such security by the Holder is effective under the Securities Act, (B) following any sale of such Conversion Shares pursuant to Rule 144, (C) if such Conversion Shares are eligible for sale under Rule 144(b)(1) without limitations, including with respect to those described in Rule 144(c)(1), (D) if the Holder certifies at any time that the Holder is not an “affiliate” of the Company (as such term is used under Rule 144 pursuant to the Securities Act), and the Holder’s holding period for purposes of Rule 144 and subsection (d)(3)(iii) thereof with respect to the Conversion Shares is at least six (6) months (it being acknowledged and agreed by the Company that the Holder’s holding period for the Conversion Shares shall be deemed to have commenced on the date hereof), or (E) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) (the “**Unrestricted Conditions**”). Promptly following such time as any of the Unrestricted Conditions has been satisfied, the Company shall cause its counsel to issue a legal opinion or other instruction to the Transfer Agent (if required by the Transfer Agent) to effect the issuance of the Conversion Shares without a restrictive legend or, in the case of Conversion Shares that have previously been issued, the removal of the legend thereunder. If any of the Unrestricted Conditions is met at the time of issuance of the Conversion Shares, then the Conversion Shares shall be issued free of all legends. The Company agrees that following such time as any of the Unrestricted Conditions is met or such legend is otherwise no longer required under this Section 3(e), it will, no later than two (2) Trading Days (or if earlier, the number of Trading Days comprising the then standard settlement period for U.S. broker-dealer securities transactions) following the delivery (the “**Unlegended Shares Delivery Deadline**”) by the Holder to the Company or the Transfer Agent of any certificate representing Conversion Shares, as applicable,

issued with a restrictive legend (such fourth Trading Day, the “**Legend Removal Date**”), deliver or cause to be delivered to such Holder a certificate (or electronic transfer) representing such Shares that is free from all restrictive and other legends. The Company shall assume (and the Holder shall be deemed to represent) that the Holder is not an affiliate of the Company, unless the Holder has otherwise advised the Company in writing.

(iii) Sale of Unlegended Shares. Holder agrees that the removal of the restrictive legend from any certificates representing securities as set forth in Section 3(e)(i) above is predicated upon the Company’s reliance that the Holder will sell any Conversion Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(f) Reservation of Shares. The Company shall at all times reserve and keep available out of its authorized but unissued Shares solely for the purpose of effecting Conversions of this Note, such number of Shares as shall from time to time be sufficient to effect the conversion of the Note (without giving effect to the 9.985% Cap); and if at any time the number of authorized but unissued Shares shall not be sufficient to effect the conversion of the entire Principal amount convertible under this Note, the Company will use its best efforts to take such corporate action as may, in the opinion of counsel, be necessary to increase its authorized but unissued Shares to such number of Shares as shall be sufficient for such purpose. The Company covenants and agrees that, upon any Conversion of this Note, all Shares issuable upon such Conversion shall be duly and validly issued, fully paid and nonassessable and not subject to preemptive rights, rights of first refusal or similar rights of any Person.

(g) Limitations on Conversion.

(i) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, the Company shall not be required to issue to the Holder, and the Holder may not acquire, a number of Shares upon Conversion or otherwise issue any Shares pursuant hereto to the extent that, upon such Conversion, the number of Shares then beneficially owned by the Holder and any other Persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder’s for purposes of Section 13(d) of the Exchange Act (including Shares held by any “group” of which the Holder is a member, but excluding Shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 9.985% of the total number of Shares then issued and outstanding (the “**9.985% Cap**”); provided, however, that the 9.985% Cap shall only apply to the extent that the Common Stock is deemed to constitute an “equity security” pursuant to Rule 13d-1(i) promulgated under the Exchange Act. For purposes hereof (including the representation contemplated by the second paragraph of this Section 3(g)(i)), “group” has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC, and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. For purposes hereof (including the representation contemplated by the second paragraph of this Section 3(g)(i)), in determining the number of outstanding Shares, the Holder may rely on the number of outstanding Shares as stated in the Company’s most recent

quarterly or annual report filed with the SEC, or any current report filed by the Corporation with the SEC subsequent thereto. Upon the written request of the Holder, the Company shall, within two (2) Trading Days, confirm orally and in writing to the Holder the number of Shares then outstanding, and the Holder shall be entitled to rely upon such confirmation for purposes hereof (including the representation contemplated by the second paragraph of this Section 3(g)(i)).

Delivery of a Conversion Notice by the Holder shall constitute a representation by the Holder that the issuance of Common Stock in accordance with such Conversion Notice will not cause the Holder (together with any other Person whose beneficial ownership of Common Stock would be aggregated with such Holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the SEC) to beneficially own a number of Shares in excess of the 9.985% Cap, as determined in accordance with, and subject to the terms, conditions, qualifications and assumptions set forth in, the immediately preceding paragraph.

(ii) Principal Market Regulation. The Company shall not be required to issue any Shares upon a Conversion if the issuance of such Shares together with any previous issuances of Shares pursuant to this Note by the Holder hereof would exceed 9,901,906 Shares, subject to appropriate adjustment for any Stock Event that occurs after the date hereof (the "**Exchange Cap**"). Upon any conversion of this Note, the Company shall issue the maximum amount of the number of Shares set forth in the applicable Conversion Notice that may be issued without exceeding the Exchange Cap. For the avoidance of doubt, to the extent the conversion of any Principal and Interest of this Note pursuant to any Conversion Notice in respect of a Conversion would have resulted in an issuance of Shares in excess of the Exchange Cap, such Principal and Interest shall not be converted (the Company having no obligation to net cash settle such conversion), and such Principal shall remain outstanding and shall be repaid in cash in accordance with the terms of this Note. Alternatively, at the option of the Holder, the Floor Price will be increased to \$0.8427 (subject to adjustment for any Stock Event that occurs after the date hereof) for the portion of the Conversion that would result in an issuance of Shares in excess of the Exchange Cap.

4. Voting Rights. Except as required by law, the Holder shall have no voting rights with respect to any of the Conversion Shares until the Conversion Date relating to the conversion of this Note upon which such Conversion Shares are issuable (or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 3(c)(iii), the first Business Day after the resolution of such *bona fide* dispute).

5. Events of Default. Subject to the provisions set forth in the Subordination Agreements, the Principal of this Note, together with all Interest accrued and unpaid thereon, shall at the option of the Holder become immediately due and payable if any one or more of the following events (an "**Event of Default**") shall have occurred and be continuing: (i) the Company's failure to pay any amount due on this Note when due; or (ii) any Act of Bankruptcy shall occur with respect to the Company.

6. Acceleration; Due on Sale. Subject to the provisions of the Subordination Agreements in the event of: (i) a Change of Control or (ii) an Event of Default, Holder may, by

written notice to the Company, declare all amounts owing under this Note to be due and payable forthwith, whereupon the same shall immediately become due and payable.

7. Amendment; Waiver. The terms and provisions of this Note shall not be amended or waived except in a writing signed by the Company and the Holder.

8. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Merger Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies (at law or in equity), to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

9. Specific Shall Not Limit General; Construction. No specific provision contained in this Note shall limit or modify any more general provision contained herein. This Note shall be deemed to be jointly drafted by the Company and Holder and shall not be construed against any Person as the drafter hereof.

10. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

11. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be provided in accordance with the notice provisions in the Merger Agreement.

12. Restrictions on Transfer.

(a) Registration or Exemption Required. This Note has been issued in a transaction exempt from the registration requirements of the Securities Act. None of the Note or the Conversion Shares may be transferred, sold, assigned, hypothecated or otherwise disposed of except pursuant to an effective registration statement or an exemption to the registration requirements of the Securities Act and applicable state securities laws including, without limitation, pursuant to Section 4(a)(7) of the Securities Act, Rule 144 under the Securities Act or a so-called "4(a)(1) and a half" transaction.

(b) Assignment. The Holder may not sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Note, in whole or in part without the express prior written consent of the Company and any such purported sale, transfer, assignment, pledge, hypothecation or other disposition shall be *void ab initio*; provided, however, following the termination of the Merger Agreement, the Company shall not unreasonably withhold, condition or delay such consent. No assignment of this Note shall be effective unless effected by the Company (including by making appropriate notation of such transfer on the Register). This Note and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors and expressly permitted assigns of the Holder.

(c) Registered Note. This Note may be transferred only upon notation of such transfer on the Register, which the Company shall promptly endeavor to do upon any transfer otherwise permitted hereunder, and no assignment thereof shall be effective until recorded therein.

13. Payment of Collection, Enforcement and Other Costs. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; or (b) an attorney is retained to represent the Holder in any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action, including reasonable attorneys' fees and disbursements.

14. Cancellation. After all Principal, Interest and other amounts at any time owed under, or on account of, this Note have been paid in full or converted into Shares in accordance with the terms hereof, this Note shall automatically be deemed cancelled, shall be surrendered to the Company for cancellation and shall not be reissued. Notwithstanding anything in this Note to the contrary, this Note shall automatically, and without any action on the part of either the Company or the Holder, be deemed to be paid in full and cancelled effective as of the Effective Time (as defined in the Merger Agreement).

15. Waiver of Notice. To the extent permitted by law, the Company hereby waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Merger Agreement.

16. Governing Law. This Note shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such State. All legal proceedings concerning the interpretation and enforcement of this Note shall be brought and determined in the Court of Chancery of the State of Delaware; provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. The Company hereby and each Holder (by its acceptance of this Note) irrevocably submits to the exclusive jurisdiction of such courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of any such

court, that such suit, action or other proceeding is improper or is an inconvenient venue for such proceeding. The Company hereby and each Holder (by its acceptance of this Note) irrevocably waives personal service of process and consents to process being served in any such suit, action or other proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such Person at the address in effect for notices to it under the Merger Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. EACH OF THE COMPANY AND THE HOLDER (BY ACCEPTANCE HEREOF) IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE ANY PROVISION OF THIS NOTE OR ANY OTHER TRANSACTION DOCUMENT. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH OF THE COMPANY AND THE HOLDER (BY ITS ACCEPTANCE HEREOF (A) CERTIFIES THAT NO OTHER PARTY AND NO AGENT, REPRESENTATIVE OR OTHER PERSON AFFILIATED WITH OR RELATED TO ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 16.

17. Interpretative Matters. Unless the context otherwise requires, (a) all references to Sections or Exhibits are to Sections or Exhibits contained in or attached to this Note, (b) each accounting term not otherwise defined in this Note has the meaning assigned to it in accordance with generally accepted accounting principles, (c) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter and (d) the use of the word “including” in this Note shall be by way of example rather than limitation. If a stock split, stock dividend, stock combination or other similar event occurs during any period over which an average price is being determined, then an appropriate adjustment will be made to such average to reflect such event.

18. Execution. A facsimile, telecopy, PDF or other reproduction of this Note may be delivered by the Company, and an executed copy of this Note may be delivered by the Company by facsimile, e-mail or other similar electronic transmission device pursuant to which the signature of or on behalf of the Company can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. The Company hereby agrees that it shall not raise the execution of facsimile, PDF or other reproduction of this Note, or the fact that any signature was transmitted by facsimile, e-mail or other similar electronic transmission device, as a defense to the Company’s execution of this Note. Notwithstanding the foregoing, the Company shall be required to deliver an originally executed Note to the Holder.

[Signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the date first set forth above.

COMPANY:

NEOS THERAPEUTICS, INC.

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Title: Chief Financial Officer

Accepted and agreed:

HOLDER:

AYTU BIOSCIENCE, INC.

By: /s/ Joshua Disbrow

Name: Joshua Disbrow

Title: Chief Executive Officer

Exhibit A

CONVERSION NOTICE

Notice Date: _____

Reference is made to the Unsecured Subordinated Convertible Promissory Note, dated February [•], 2021 (the “**Note**”) of NEOS THERAPEUTICS, INC., a Delaware corporation (the “**Company**”), in the original principal amount of up to \$5,000,000.00; capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Note. In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount indicated below, which is 100% of the Principal as of the Notice Date set forth above, into shares of common stock, par value \$0.001 per share (the “**Common Stock**”), of the Company, as of the date specified below.

Date of Conversion: _____

Amount of Principal to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Note is being converted in the following name and, if physical certificates are applicable, to the following address:

Issue to: _____

DTC	Participant	Number and
Name: _____		
Account		
Number: _____		

Exhibit B

Reg Rights Side Letter

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this “Agreement”), dated as of February 8, 2021, by and among Neos Therapeutics, Inc., a Delaware corporation (the “Company”) and Aytu BioScience, Inc., a Delaware Corporation (“Aytu”).

WHEREAS:

A. In connection with the entry into that certain Agreement and Plan of Merger (the “Merger Agreement”) among Neos, Aytu and Neutron Acquisition Sub, Inc., a wholly owned subsidiary of Aytu, dated as of December 10, 2020, the Company is entering into that certain Unsecured Convertible Promissory Note, dated as of the date hereof, with Aytu for the issuance of Convertible Note (as defined below), which permit each holder to convert the principal of the Convertible Note held thereby into shares of the Company’s common stock (“Common Stock”), in each case, upon the terms and conditions, and subject to the limitations, set forth in the Convertible Note; and

B. To induce Aytu to accept and agree to the terms of the Convertible Note, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “Securities Act”), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Investors hereby agree as follows:

1. DEFINITIONS.

a. As used in this Agreement, the following terms shall have the following meanings:

(i) “Additional Filing Deadline” means, with respect to any Registration Statement that may be required pursuant to Section 2(a)(ii), (A) the first date or time that such Registrable Securities may then be included in a Registration Statement if such Registration Statement is required because the SEC shall have notified the Company in writing that certain Registrable Securities were not eligible for inclusion on a previously filed Registration Statement, or (B) if such additional Registration Statement is required for a reason other than as described in (A) above, the twentieth (20th) day following the date on which the Company first knows that such additional Registration Statement is required; provided, however, if the Additional Filing Deadline would otherwise fall more than 45 days, but less than 76 days, after the end of the Company’s most recent fiscal year and the Company is unable to comply with the Additional Filing Deadline solely as a result of the unavailability of audited financial statements for such fiscal year, the Additional Filing Deadline shall be extended until the first business day following the earlier to occur of (a) the deadline (without regard to any extensions that may be permitted by Rule 12b-25 under the Exchange Act) for filing by the Company of an annual report on Form 10-K containing such financial statements with the SEC and (b) the date on which the Company files an annual report on Form 10-K containing such financial statements with the SEC.

(ii) “Additional Registration Deadline” means, with respect to any additional Registration Statement(s) that may be required to be filed pursuant to Section 2(a)(ii), the thirtieth (30th) day following (A) the first date or time that such Registrable Securities may then be included in a Registration Statement if such Registration Statement is required because the SEC shall have notified the Company in writing that certain Registrable Securities were not eligible for inclusion on a previously filed Registration Statement, or (B) if such additional Registration Statement is required for a reason other than as described in (A) above, the fortieth (40th) day following the date on which the Company first knows that such additional Registration Statement(s) is required; provided, however, if the applicable Additional Filing deadline is extended due to the proviso contained in Section 1(a)(i) above, then such Additional Registration Deadline shall be extended until the thirtieth (30th) or fortieth (40th) day, as the case may be, following the Additional Filing Deadline, as so extended, and provided, further, that if, following the filing date but before the date that the additional Registration Statement is declared effective by the SEC, the Company is unable to file a pre-effective amendment to the additional Registration Statement that is required in order to cause such additional Registration Statement to become

effective because such amendment would otherwise be filed more than 45 days, but less than 76 days, after the end of the Company's last fiscal year and the audited financial statement for such

year are unavailable, the Additional Registration Deadline shall be the date that is the later of (a) thirty (30) days after the earlier of (1) the deadline (without regard to any extensions that may be permitted by Rule 12b-25 under the Exchange Act) for filing by the Company of an annual report on Form 10-K containing such financial statements with the SEC and (2) the date on which the Company files an annual report on Form 10-K containing such financial statements with the SEC, and (b) forty-five (45) days after the Registration Statement is filed.

(iii) “Convertible Note” means the Unsecured Convertible Promissory Note issued by the Company pursuant to, and in accordance with, the terms of the Merger Agreement.

(iv) “Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder, and any successor statute.

(v) “Filing Deadline,” for the Registration Statement required pursuant to Section 2(a)(i), shall mean the date that is thirty (30) calendar days following the date of the termination of the Merger Agreement for any reason, and, for each Registration Statement required pursuant to Section 2(a)(ii) shall mean the Additional Filing Deadline.

(vi) “FINRA” means the Financial Industry Regulatory Authority (or successor thereto).

(vii) “Investor” means Aytu and any transferee or assignee who agrees to become bound by the provisions of this Agreement in accordance with Section 10 hereof.

(viii) “Person” means and includes any natural person, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

(ix) “Prospectus” means (i) any prospectus (preliminary or final) included in any Registration Statement, as may be amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to such prospectus, including post-effective amendments, and all material incorporated by reference in such prospectus, and (ii) any “free writing prospectus” as defined in Rule 405 under the Securities Act relating to any offering of Registrable Securities pursuant to a Registration Statement.

(x) “Register,” “Registered,” and “Registration” refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the Securities Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the “SEC”).

(xi) “Registrable Securities,” for a given Registration, means (a) any shares of Common Stock (the “Conversion Shares”) issued or issuable upon conversion of the Convertible Note (without giving effect to any limitations on conversion set forth in the Convertible Note), and (b) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to any of the foregoing; provided, however, that any Registrable Securities shall cease to be Registrable Securities when (x) a Registration Statement with respect to the sale of such securities has become effective under the Securities Act and such securities have been disposed of in accordance with such Registration Statement, (y) such securities are sold in accordance with Rule 144 under the Securities Act or any successor rule (“Rule 144”), or (z) all of such securities may be immediately sold to the public without registration or restriction (including without limitation as to volume by each holder thereof), and without compliance with any “current public information” requirement, pursuant to Rule 144.

(xii) “Registration Deadline” shall mean, for purposes of the Registration Statement required pursuant to Section 2(a)(i), the earlier of (i) the date that is seventy-five (75) days after the date that the applicable Registration Statement is actually filed or (ii) the date that is seventy-five (75) days after the applicable Filing Deadline and, with respect to any Registration Statement required pursuant to Section 2(a)(ii), the Additional Registration Deadline.

(xiii) “Registration Statement(s)” means any registration statement(s) of the Company filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, all

amendments and supplements to such registration statement, including post-effective amendments, and all exhibits to, and all material incorporated by reference in, such registration statement.

(xiv) “Rule 415” means Rule 415 under the Securities Act or any successor rule providing for the offering of securities on a continuous basis.

2. REGISTRATION.

a. MANDATORY REGISTRATION. (i) Following the date hereof, the Company shall prepare, and, on or prior to the applicable Filing Deadline, file with the SEC a Registration Statement (the “Mandatory Registration Statement”) on Form S-3 (or, if Form S-3 is not then available, on such form of Registration Statement as is then available to effect a registration of the Registrable Securities, subject to the consent of the Investors, which consent shall not be unreasonably withheld) covering the resale of the Registrable Securities, which Registration Statement, to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of, or otherwise pursuant to, the Convertible Note or the Conversion Shares to prevent dilution resulting from stock splits, stock dividends or similar transactions. The number of shares of Common Stock initially included in such Registration Statement shall be no less than 9,901,574 shares, subject to adjustment for any Stock Event (as defined in the Convertible Note) following the date hereof. Each Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to (and shall be subject to the approval, which shall not be unreasonably withheld or delayed, of) the Investors and their counsel prior to its filing or other submission.

(ii) If for any reason, despite the Company’s use of its best efforts to include all of the Registrable Securities in the Registration Statement filed pursuant to Section 2(a)(i) above, the Company is not permitted to include all of the Registrable Securities in, or for any other reason any Registrable Securities are not then included in, such Registration Statement, then the Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an additional Registration Statement covering the resale of all Registrable Securities not already covered by an existing and effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415.

b. RESERVED.

3. OBLIGATIONS OF THE COMPANY. In connection with any registration of the Registrable Securities hereunder, the Company shall have the following obligations:

a. The Company shall prepare promptly, and file with the SEC as soon as practicable after such registration obligation arises hereunder (but in no event later than the applicable Filing Deadline), a Registration Statement with respect to the number of Registrable Securities provided in Section 2(a), as applicable, and thereafter use its best efforts to cause each such Registration Statement relating to Registrable Securities to become effective as soon as possible after such filing, but in any event shall cause each such Registration Statement relating to Registrable Securities to become effective no later than the Registration Deadline, and shall thereafter keep the Registration Statement current and effective pursuant to Rule 415 at all times until such date as is the earlier of (i) the date on which all of the Registrable Securities included in such Registration Statement have been sold and (ii) the date on which no Investor holds any Registrable Securities (the “Registration Period”), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), except for information provided in writing by an Investor pursuant to Section 4(a), shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading. In the event that Form S-3 is not available for the registration of the resale of any Registrable Securities hereunder (but, for the avoidance of doubt, without in any way affecting the Company’s obligation to register the resale of the Registrable Securities on such other form as is available, as provided in Section 2(a)), (i) the Company shall undertake to file, within twenty-five (25) days of such time as such form is available for such registration, a post-effective amendment to the Registration Statement then in effect, or otherwise file a Registration Statement on Form S-3, registering such Registrable Securities on Form S-3; provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement (or post-effective amendment) on Form S-3 covering such Registrable Securities has been declared effective by the SEC, and



(ii) the Company shall provide that any Registration Statement on Form S-1 filed hereunder shall incorporate documents by reference (including by way of forward incorporation by reference) to the maximum extent possible.

b. Subject to Section 3(q) hereof, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each Registration Statement as may be necessary to keep each Registration Statement current and effective at all times during the Registration Period, and, during the Registration Period, shall comply with the provisions of the Securities Act applicable to the Company with respect to the disposition of all Registrable Securities covered by each Registration Statement until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the event that on any Trading Day (as defined below) the number of shares available under the Registration Statements filed pursuant to this Agreement is insufficient to cover all of the Registrable Securities issued or issuable upon conversion of, or otherwise pursuant to, the Convertible Note (the "Registration Trigger Date"), without giving effect to any limitations on the Investors' ability to convert the Convertible Note (but giving effect to the Exchange Cap (as defined in the Convertible Note) unless the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market (as defined in the Convertible Note)), then the Company shall as soon as practicable, but in any event within twenty (20) days after the Registration Trigger Date, amend the Registration Statements, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover the total number of Registrable Securities so issued or issuable (assuming a Conversion Price (as defined in the Convertible Note) of Fifty Cents (\$0.50) (subject to appropriate adjustment for any Stock Event that occurs after the date of this Agreement) and without giving effect to any limitations on conversion contained in the Convertible Note, but giving effect to the Exchange Cap unless the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market) as of the second Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement with the SEC. The Company shall use its best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof, but in any event the Company shall cause such amendment and/or new Registration Statement to become effective within sixty (60) days of the Registration Trigger Date or as promptly as practicable in the event the Company is required to increase its authorized shares. "Trading Day" shall mean any day on which the Common Stock is traded for any period on the NASDAQ Global Market (the "NasdaqGM"), or if not the NasdaqGM, the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Capital Market or, in each case, any successor thereto. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all Registrable Securities" specified above if as of any date of determination (A) the number of shares of Common Stock equal to the sum of (x) the total number of Conversion Shares so issued or issuable (assuming a Conversion Price of Fifty Cents (\$0.50) (subject to appropriate adjustment for any Stock Event that occurs after the date of this Agreement) and without giving effect to any limitations on conversion contained in the Convertible Note, but giving effect to the Exchange Cap unless the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market) plus (y) the number of shares of Common Stock otherwise beneficially owned by the Investors that remain Registrable Securities as of such date of determination is greater than (B) the number of shares of Common Stock available for resale under such Registration Statement. The foregoing calculations shall be made without regard to any limitations on conversion of the Convertible Note.

c. The Company shall furnish or otherwise make available to each Investor and its legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, and, in the case of a Registration Statement referred to in Section 2(a), each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought or intends to seek confidential treatment); and provided that the Company may excise any information contained therein which would constitute material non-public information as to any Investor which has not executed a confidentiality agreement with the Company, and (ii) such number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as an Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor; provided that the Company may determine in its reasonable judgment to provide any such copies in electronic form only. The Company will promptly notify each of the Investors by electronic mail of the effectiveness of each Registration Statement or any post-effective amendment.



The Company will respond to any and all comments received from the SEC as soon as reasonably practicable, with a view towards causing each Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and, as soon as practicable, but in no event later than three (3) business days, following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review, shall file a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) business days after the submission of such request; provided, however, that if during such period, the Company is unable to file such acceleration request because such acceleration request would otherwise be filed more than 45, but less than 76 days, after the end of the Company's most recent fiscal year and the audited financial statements for such fiscal year are unavailable at such time, such obligation to file an acceleration request shall be extended until the first business day following the earlier of (a) the deadline (without regard to any extensions that may be permitted by Rule 12b-25 under the Exchange Act) for filing by the Company of an annual report on Form 10-K containing such financial statements with the SEC and (b) the date on which the Company files an annual report on Form 10-K containing such financial statements with the SEC. After such Registration Statement becomes effective, the Company will file with the SEC the final prospectus included therein pursuant to Rule 424 (or successor thereto) under the Securities Act within the time period required by the Securities Act.

d. The Company shall use its best efforts to (i) register and qualify, in any jurisdiction where registration and/or qualification is required, the Registrable Securities covered by the Registration Statements under such other securities or "blue sky" laws of such jurisdictions in the United States as the Investors shall reasonably request in writing, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be reasonably necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be reasonably necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction.

e. Subject to Section 3(q) hereof, as promptly as practicable after becoming aware of such event, the Company shall notify each Investor that holds Registrable Securities of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading, and promptly prepare a supplement or amendment to any Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to each Investor as such Investor may reasonably request.

f. The Company shall use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of any Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest practicable moment and to notify each Investor that holds Registrable Securities (and, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

g. The Company shall permit a single firm of counsel designated by the Investors ("Legal Counsel") to review such Registration Statement and all amendments and supplements thereto (as well as all requests for acceleration or effectiveness thereof), for a reasonable period of time prior to their filing with the SEC and use commercially reasonable efforts to reflect in such documents any comments as such counsel may reasonably propose (so long as such comments are provided to the Company at least two (2) business days prior to the expected filing date) (provided that the Company shall make the final decision as to the form and content of each such document) and will not request acceleration of such Registration Statement without prior notice to Legal Counsel. Any fees incurred by Legal Counsel shall be governed by Section 6 of this Agreement.

h. The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in

any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning any Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Investor prior to making such disclosure, and allow such Investor, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

i. The Company shall use its best efforts to cause all the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange.

j. The Company shall provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the initial Registration Statement.

k. The Company shall cooperate with each Investor that holds Registrable Securities being offered and the managing underwriter or underwriters as reasonably requested by them with respect to an applicable Registration Statement, if any, to facilitate the timely (i) preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to such Registration Statement, and enable such certificates to be registered in such names and in such denominations or amounts, as the case may be, or (ii) crediting of the Registrable Securities to be offered pursuant to a Registration Statement to the applicable account (or accounts) with The Depository Trust Company through its Deposit/Withdrawal At Custodian (DWAC) system, in any such case as such Investor or the managing underwriter or underwriters, if any, may reasonably request. Within three (3) business days after a Registration Statement which includes Registrable Securities becomes effective, the Company shall deliver, and shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to each Investor) an appropriate instruction and an opinion of such counsel in the form required by the transfer agent in order to issue the Registrable Securities free of restrictive legends.

l. At the reasonable request of an Investor, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and any prospectus used in connection with the Registration Statement as may be necessary in order to make changes to the plan of distribution set forth in such Registration Statement.

m. The Company shall not, and shall not agree to, allow the holders of any securities of the Company to include any of their securities (other than Registrable Securities) in any Registration Statement filed pursuant to Section 2(a) hereof or any amendment or supplement thereto under Section 3(b) hereof without the consent of Investors holding a majority-in-interest of the then outstanding Registrable Securities. In addition, the Company shall not include any securities for its own account or the account of others in any Registration Statement filed pursuant to Section 2(a) hereof or any amendment or supplement thereto filed pursuant to Section 3(b) hereof without the consent of Investors holding a majority-in-interest of the then outstanding Registrable Securities.

n. Until the first date on which Aytu's commitment to make advances under the Convertible Note has been terminated and all amounts outstanding under the Convertible Note have been paid in full in cash, the Company shall not issue any equity securities or securities convertible into equity securities of the Company from the date hereof until 30 days after the Registration Statement or any amendment thereto is declared effective by the SEC, except for the issuance by the Company of (i) shares of Common Stock upon the exercise of any stock option or warrant or the conversion of any security outstanding on the date hereof into shares of Common Stock or (ii) stock options, restricted stock units or shares of Common Stock under any equity compensation plan of the Company.

o. The Company shall comply with all applicable laws related to a Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC).

p. If required by the FINRA Corporate Financing Department, the Company shall promptly effect a filing with FINRA pursuant to FINRA Rule 5110 (or successor thereto) with respect to the public offering contemplated by resales of securities under the Registration Statement (an “Issuer Filing”), and pay the filing fee required by such Issuer Filing. The Company shall use its best efforts to pursue the Issuer Filing until FINRA issues a letter confirming that it does not object to the terms of the offering contemplated by the Registration Statement.

q. Notwithstanding anything to the contrary in Section 3(e), at any time after the effective date of the applicable Registration Statement, the Company may delay the effectiveness of any Registration Statement, other than the Registration Statement filed pursuant to Section 2(a)(i) hereof, or suspend the use of any prospectus forming a part of any Registration Statement, in its reasonable, good faith discretion, due to the non-disclosure of material non-public information concerning the Company, the disclosure of which at such time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and not, in the opinion of counsel to the Company, otherwise required (a “**Grace Period**”); provided, that the Company shall (i) promptly notify the Investors in writing of the existence of a Grace Period (provided that in each notice the Company shall not be required to disclose the content of such material non-public information to any Investor) and the date on which the Grace Period will begin, and (ii) as soon as practicable after such date may be determined, notify the Investors in writing of the date on which the Grace Period ends; and, provided, further, that (A) no Grace Period shall exceed forty-five (45) consecutive days, (B) during any three hundred sixty five (365) day period, such Grace Periods shall not exceed an aggregate of seventy-five (75) days, and (C) the first day of any Grace Period must be at least ten (10) Trading Days after the last day of any prior Grace Period (each Grace Period that satisfies all of the requirements of this Section 3(q) being referred to as an “**Allowable Grace Period**”). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(e) hereof shall not be applicable during the period of any Allowable Grace Period, damages pursuant to Section 3 of the Convertible Note shall not accrue on any day during an Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(e) with respect to the information giving rise thereto unless such material non-public information is no longer applicable.

4. OBLIGATIONS OF THE INVESTOR. In connection with the registration of the Registrable Securities, each Investor shall have the following obligations:

a. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of an Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least seven (7) business days prior to the first anticipated filing date of a Registration Statement, the Company shall notify each Investor of the information the Company requires from such Investor. Any such information shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading. An Investor must provide such information to the Company at least two (2) business days prior to the first anticipated filing date of such Registration Statement if such Investor elects to have any Registrable Securities included in the Registration Statement.

b. Each Investor, by such Investor’s acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor’s election to exclude all of the Investor’s Registrable Securities from such Registration Statement.

c. In the event of an underwritten offering pursuant to Section 2(b) in which any Registrable Securities of any Investor are to be included, such Investor agrees to enter into and perform the Investor’s obligations under an underwriting agreement, in usual and customary form, including customary indemnification and contribution obligations (as applicable to selling security holders generally), with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of such Investor Registrable Securities.

d. Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) or 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or 3(f).

e. Each Investor agrees that it will not effect any disposition or other transfer of the Registrable Securities that would constitute a sale within the meaning of the Securities Act other than transactions exempt from the registration requirements of the Securities Act or pursuant to, and as contemplated in, a Registration Statement declared effective by the SEC, and that it will promptly notify the Company of any material changes in the information set forth in a Registration Statement furnished by or regarding such Investor or its plan of distribution other than changes in the number of shares beneficially owned.

5. REGISTRATION FAILURE.

a. In the event a Registration Statement, and any amendments and/or supplements thereto, covering or intending to cover the Registrable Securities is not declared effective by the SEC by or before the Registration Deadline, the Company shall pay to Aytu an additional number of shares of Common Stock of the Company, equal to three percent (3%) of the Registrable Securities covered by such Registration Statement for each 30-day period such Registration Statement is not declared effective after the Registration Deadline (or an equivalent value in cash if such issuance of shares of Common Stock is not permitted under the applicable rules of the Principal Market, as determined by reference to the five-day average closing price of the Common Stock immediately prior to the date on which such issuance would otherwise be required); provided that such additional payments shall not be required (or shall cease to accrue, as applicable) to the extent that Aytu would otherwise be able to sell all of its Registrable Securities intended to be covered by such Registration Statement in a transaction pursuant to Rule 144 under the Securities Act or any successor rule (without regard to volume limitations).

b. In the event a Registration Statement and any amendments and/or supplements thereto, covering or intending to cover the Registrable Securities is not declared effective by the SEC or is otherwise unavailable for Aytu to use to resell its Registrable Securities by or before the Registration Deadline, prior to which time Aytu would otherwise have been able to sell all of its Registrable Securities covered by such Registration Statement in a transaction pursuant to Rule 144 under the Securities Act, or any successor rule (without regard to volume limitations), the Company shall pay to Aytu an additional number of shares of Common Stock of the Company, equal to three percent (3%) of the remaining unsold number of shares of Common Stock covered by such Registration Statement for each 30-day period such Registration Statement is not declared effective after the Registration Deadline or otherwise not available to use for resales of the Registrable Securities (or an equivalent value in cash if such issuance of shares of Common Stock is not permitted under the applicable rules of the Principal Market, as determined by reference to the five-day average closing price of the Common Stock immediately prior to the date on which such issuance would otherwise be required).

6. EXPENSES OF REGISTRATION. All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees, and the fees and disbursements of counsel for the Company shall be borne by the Company. The Company shall also reimburse the Investors for the reasonable fees and disbursements of Legal Counsel in the aggregate amount up to \$25,000 per registration in connection with registrations pursuant to Section 2 or 3 of this Agreement.

7. INDEMNIFICATION. In the event any Registrable Securities are included in a Registration Statement under this Agreement:

a. The Company will indemnify, hold harmless and defend (i) each Investor, (ii) the directors, officers, partners, managers, members, employees, agents of each Investor, and each Person who controls any Investor within the meaning of the Securities Act or the Exchange Act, if any, (iii) any underwriter (as defined in the Securities Act) for each Investor in connection with an underwritten offering pursuant to Section 2(b) hereof, and (iv) the directors, officers, partners, employees and each Person who controls any such underwriter within the meaning of the Securities Act or the Exchange Act, if any (each, an "Indemnified Person"), against any joint or several losses,

claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in any Registration Statement, or any amendment as supplement thereto, or any filing made under state securities laws as required hereby, or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, or any amendment or supplement thereto, or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). The Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable and documented legal fees and other reasonable and documented expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7(a) (A) shall not apply to a Claim arising out of or based upon a Violation to the extent that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Indemnified Person expressly for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto; and (B) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by any of the Investors pursuant to Section 10.

b. Promptly after receipt by an Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is to be made against the Company under this Section 7, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnified Person, as the case may be;

provided, however, that an Indemnified Person shall have the right to retain its own counsel with the reasonable and documented fees and expenses to be paid by the Company, if, in the reasonable opinion of counsel for such Indemnified Person, the representation by such counsel of the Indemnified Person and the Company would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The Company shall pay for only one separate legal counsel for the Indemnified Persons, and such legal counsel shall be selected by the Investors. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnified Person under this Section 7, except to the extent that the Company is actually prejudiced in its ability to defend such action. The Company shall not, without the prior written consent of the Indemnified Persons, consent to entry of any judgment or enter into any settlement or other compromise with respect to any Claim in respect of which indemnification or contribution may be or has been sought hereunder (whether or not any such Indemnified Party is an actual or potential party to such action or claim) which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Persons of a full release from all liability with respect to such Claim or which includes any admission as to fault or culpability on the part of any Indemnified Person.

c. Each Investor will indemnify, hold harmless and defend (i) the Company, and (ii) the directors, officers, partners, managers, members, employees, or agents of the Company, if any (each, a "Company Indemnified Person"), against any Claims to which any of them may become subject insofar as such Claims arise out of or are based upon any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities, which occurs due to the inclusion by the Company in a Registration Statement of false or misleading information about an Investor, where such information was furnished in writing to the Company by or on behalf of such Investor expressly for the purpose of inclusion in such Registration Statement. Such Investor shall reimburse the Company Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees

or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything herein to the contrary, the indemnity agreement contained in this Section 7(c) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Investors, which consent shall not be unreasonably withheld or delayed; and provided, further, however, that an Investor shall be liable under this Section 7(c) for only that amount of a Claim as does not exceed the net amount of proceeds received by such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company Indemnified Person.

d. Promptly after receipt by a Company Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Company Indemnified Person shall, if a Claim in respect thereof is to be made against any Investor under this Section 7, deliver to such Investor a written notice of the commencement thereof, and such Investor shall have the right to participate in, and, to the extent such Investor so desires, to assume control of the defense thereof with counsel mutually satisfactory to such Investor and such Company Indemnified Person.

PROVIDED, HOWEVER, that a Company Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the applicable Investor, if, in the reasonable opinion of counsel for the Company, the representation by such counsel of the Company Indemnified Person and the Investor would be inappropriate due to actual or potential material differing interests between the Company Indemnified Person and any other party represented by such counsel in such proceeding. An Investor shall pay for only one separate legal counsel for the Company Indemnified Persons, and such legal counsel shall be selected by the Company. The failure to deliver written notice to the Investor within a reasonable time of the commencement of any such action shall not relieve the Investor of any liability to the Company Indemnified Person under this Section 7, except to the extent that the Investor is actually prejudiced in its ability to defend such action. No Investor shall, without the prior written consent of the Company Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise with respect to any Claim in respect of which indemnification or contribution may be or has been sought hereunder (whether or not any such Company Indemnified Person is an actual or potential party to such action or claim) which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Company Indemnified Person of a full release from all liability with respect to such Claim or which includes any admission as to fault or culpability on the part of any Company Indemnified Person.

8. CONTRIBUTION. If for any reason the indemnification provided for in Section 7(a) or 7(c) (as applicable) is unavailable to an Indemnified Person or Company Indemnified Person (as applicable) or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the Indemnified Person or Company Indemnified Person (as applicable) as a result of the Claim in such proportion as is appropriate to reflect the relative fault of the Indemnified Person or Company Indemnified Person (as applicable) and the indemnifying party (provided that the relative fault of any Company Indemnified Person shall be deemed to include the fault of all other Company Indemnified Persons), as well as any other relevant equitable considerations. No Person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of an Investor be greater in amount than the net amount of proceeds received by such Investor as a result of the sale of Registrable Securities giving rise to such contribution obligation pursuant to the applicable Registration Statement (net of the aggregate amount of any damages or other amounts such Investor has otherwise been required to pay (pursuant to Section 7(c) or otherwise) by reason of such Investor's untrue or alleged untrue statement or omission or alleged omission).

9. REPORTS UNDER THE 1934 ACT. From the date of this Agreement until the first business day on which no Convertible Note is convertible into shares of Common Stock of the Company, with a view to making available to the Investors the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration, the Company agrees to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;



b. file with the SEC in a timely manner all reports and other documents required of the Company under the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. so long as any of the Investors owns Registrable Securities, promptly upon request, furnish to such Investor (i) a written statement by the Company that it has complied with the reporting requirements of the Exchange Act as required for applicable provisions of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (iii) such other information as may be reasonably requested to permit such Investor to sell such Registrable Securities pursuant to Rule 144 without registration.

10. ASSIGNMENT OF REGISTRATION RIGHTS. The rights under this Agreement shall be automatically assignable by each Investor to any transferee of all or any portion of the Registrable Securities (provided such transfer is permitted under the Convertible Note) if: (i) such Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, and (iii) the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein as applicable to the Investors. In the event that an Investor transfers all or any portion of its Registrable Securities pursuant to this Section, the Company shall have up to ten (10) days to file any amendments or supplements necessary to keep a Registration Statement current and effective pursuant to Rule 415, and the commencement date of any Registration Failure (as defined in the Convertible Note) caused thereby will be extended by ten (10) days.

11. AMENDMENT OF REGISTRATION RIGHTS. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with written consent of the Company and the holders of a majority-in-interest of then-outstanding Registrable Securities. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon each of the Investors and the Company.

12. MISCELLANEOUS.

a. A Person is deemed to hold, and be a holder of, shares of Common Stock or other Registrable Securities whenever such Person owns of record or beneficially through a "street name" holder such shares of Common Stock or other Registrable Securities (or the Convertible Note or Conversion Shares, without giving effect to any limitations on exercise, conversion or exchange of the Convertible Note, Conversion Shares or other securities), and solely for purposes hereof, Registrable Securities shall be deemed outstanding to the extent they are directly or indirectly issuable upon conversion of the Convertible Note, without giving effect to any limits on exercise, conversion or exchange of the Convertible Note, Conversion Shares or other securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities (or the Convertible Note or Conversion Shares or other securities upon exercise, conversion, redemption or exchange of which such Registrable Securities are directly or indirectly issuable).

b. Any notices required or permitted to be given under the terms hereof shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by electronic mail and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by electronic mail, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Neos Therapeutics, Inc.
2940 N. Hwy 360, Suite 400
Grand Prairie, TX 75050

Facsimile: (972) 408-1143
E-mail: reisenstadt@neostx.com
Attn: Richard Eisenstadt

With copy to:

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Facsimile: (617) 801-8864
Email: jtheis@goodwinlaw.com
Attn: Joseph C. Theis, Jr., Esq.

If to an Investor:

Aytu Bioscience, Inc.
373 Inverness Parkway, Suite 206
Englewood, CO 80112
Email: josh.disbrow@aytubio.com
Attn: Joshua Disbrow

With a copy to:

Dorsey & Whitney LLP
111 S. Main Street, Suite 2100
Salt Lake City, UT 84111
Email: taylor.nolan@dorsey.com, keller.troy@dorsey.com and johnson.brooke@dorsey.com
Attn: Nolan S. Taylor, Esq.
Troy M. Keller, Esq.
Brooke S. Johnson, Esq.

Each party shall provide notice to the other party of any change in address.

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the Court of Chancery of the State of Delaware; provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each party hereby irrevocably submits to the exclusive jurisdiction of such courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury in any action or proceeding brought to enforce any provision of this Agreement. This waiver applies to any action, suit or proceeding whether sounding in tort, contract or otherwise. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such



action or proceeding shall be reimbursed by the other party for its reasonable and documented attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

e. This Agreement and the Convertible Note constitute the entire agreement among the parties hereto with respect to the subject matter hereof. This Agreement and the Convertible Note supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

f. Subject to the requirements of Section 10 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, and the provisions of Sections 7 and 8 hereof shall inure to the benefit of, and be enforceable by, each Indemnified Person and Company Indemnified Person (as applicable).

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other parties may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Investors by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for breach of its obligations hereunder will be inadequate and agrees, in the event of a breach or threatened breach by the Company of any of the provisions hereunder, that the Investors shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

l. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

m. In the event an Investor shall sell or otherwise transfer any of such holder's Registrable Securities, each transferee shall be allocated a pro rata portion of the number of Registrable Securities included in a Registration Statement for such transferor.

n. There shall be no oral modifications or amendments to this Agreement. This Agreement may be modified or amended only in writing.

o. The Company shall not grant any Person any registration rights with respect to shares of Common Stock or any other securities of the Company to the extent such registration rights limit in any way the number of Registrable Securities that could be included in any Registration Statement pursuant to Rule 415 and shall not otherwise enter into any agreement that is inconsistent with the rights granted to the Investors hereunder.

p. The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a



presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

q. Unless the context otherwise requires, (i) all references to Sections are to Sections contained in this Agreement, (ii) words in the singular or plural include the singular and plural, and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, and (ii) the use of the word “including” in this Agreement shall be by way of example rather than limitation.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the undersigned Investor and the Company have caused this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

NEOS THERAPEUTICS, INC., a Delaware corporation

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Title: Chief Financial Officer, Secretary and Treasurer

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, the undersigned Investor and the Company have caused this Registration Rights Agreement to be duly executed as of the date first written above.

INVESTOR:

AYTU BIOSCIENCE, INC.

By: /s/ Joshua Disbrow
Name: Joshua Disbrow
Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement]

SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT (this “Agreement”), dated as of February 8, 2021, is entered into by and among (i) AYTU BIOSCIENCE, INC., a Delaware corporation (“Subordinated Lender”), (ii) NEOS THERAPEUTICS, INC., a Delaware corporation (“Borrower”), and (iii) DEERFIELD PRIVATE DESIGN FUND III, L.P. and DEERFIELD PARTNERS, L.P. (each, a “Lender” and, collectively, the “Lenders”, and, together with any other institutions or other entities from time to time parties to the Facility Agreement (as hereinafter defined) as Lenders, the “Senior Lenders”).

RECITALS

A. Borrower and Lenders have entered into a Facility Agreement, dated as of May 11, 2016 (as the same has been amended prior to the date hereof and as the same may be further amended, restated, supplemented or otherwise modified from time to time hereafter, the “Facility Agreement”) pursuant to which, among other things, Lenders agreed, subject to the terms and conditions set forth in the Facility Agreement, to make certain loans and financial accommodations to Borrower.

B. All of Borrower’s obligations to Senior Lenders under the Facility Agreement and the other Senior Loan Documents (as hereinafter defined) are secured by liens on and security interests in the Collateral (as defined in the Facility Agreement).

C. On the date hereof, Borrower has issued to Subordinated Lender that certain Unsecured Convertible Promissory Note in the aggregate principal amount of up to \$5,000,000 (the “Subordinated Note”).

D. As an inducement to and as one of the conditions precedent to the agreement of Senior Lenders to consent to the transactions contemplated by the Subordinated Loan Documents (as hereinafter defined), Lenders have required the execution and delivery of this Agreement by Subordinated Lender and Borrower in order to set forth the relative rights and priorities of Senior Lenders and Subordinated Lender under the Senior Loan Documents and the Subordinated Loan Documents (as hereinafter defined).

AGREEMENT

NOW, THEREFORE, in order to induce the Lenders to consent to the transactions contemplated by the Subordinated Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby covenant and agree as follows:

1. Definitions. All capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Facility Agreement. In addition, the following terms shall have the following meanings in this Agreement:

“Agreement” shall have the meaning ascribed thereto in the preamble hereof.

“Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

“Borrower” shall have the meaning ascribed thereto in the preamble hereof.

“Distribution” shall mean, with respect to any indebtedness or other obligation, (a) any payment or distribution by any Person of cash or other property, by set-off or otherwise, on account of such indebtedness or obligation, including, without limitation, at maturity of such indebtedness, (b) any redemption, purchase or other acquisition of such indebtedness or obligation by any Person, or (c) the granting of any lien or security interest to or for the benefit of the holders of such indebtedness or obligation in or upon any property of any Person.

“Enforcement Action” shall mean (a) to take from or for the account of Borrower or any guarantor of the Subordinated Loan(s), by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by Borrower or any such guarantor with respect to the Subordinated Loan (other than as expressly provided in Section 2.1 below); (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding against Borrower or any such guarantor, including, without limitation, commencement of an involuntary proceeding against Borrower under the Bankruptcy Code, to (i) enforce payment of or to collect the whole or any part of the Subordinated Loan (which shall include, for the avoidance of doubt, any demand or collection of payment at maturity), or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Loan Documents or applicable law with respect to the Subordinated Loan; (c) to accelerate the Subordinated Loan(s); (d) to exercise any put option or to cause Borrower or any such guarantor to honor any redemption or mandatory prepayment obligation under any Subordinated Loan Document; or (e) to take any action under the provisions of any state or federal law, including, without limitation, the Uniform Commercial Code, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any property or assets of Borrower or any such guarantor, including the Collateral.

“Facility Agreement” shall have the meaning ascribed thereto Recital A.

“Lender” and “Lenders” shall have the meanings ascribed thereto in the preamble hereof.

“Paid in Full” or “Payment in Full” shall mean, with respect to the Senior Loans, the date of the full payment in cash and satisfaction in full of all of the obligations under the Senior Loan Documents (other than inchoate indemnity obligations for which a claim has not yet been made and any other obligations which, by their terms survive the termination of the Senior Loan Documents), and the termination of all obligations of Senior Lenders under the Senior Loan Documents (including, without limitation, any commitment to lend), and the termination of the Senior Loan Documents.

“Person” shall mean any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

“Proceeding” shall mean any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of a Person.

“Senior Lenders” shall have the meaning ascribed thereto in the preamble hereof.

“Senior Loan(s)” shall mean all obligations, liabilities and indebtedness of every nature of Borrower from time to time owed to Senior Lenders under the Facility Agreement and the other Senior Loan Documents, whether now existing or hereafter created, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code, together with (a) any amendments, modifications, renewals, refinancings, replacements or extensions thereof, and (b) any interest

accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest, fees, costs or expenses are an allowed claims in any such Proceeding.

“Senior Loan Documents” shall mean the Facility Agreement, and all promissory notes or other instruments evidencing the Senior Loan or the obligation to pay the Senior Loan, any guaranties with respect to the Senior Loan, any security agreement or other collateral document securing the Senior Loan and all other documents, agreements and instruments now existing or hereafter entered into evidencing or pertaining to all or any portion of the Senior Loan.

“Subordinated Lender” shall have the meaning ascribed thereto in the preamble to this Agreement.

“Subordinated Loan(s)” shall mean all obligations, liabilities and indebtedness of every nature of Borrower from time to time owed to Subordinated Lender pursuant to the Subordinated Loan Documents, whether now existing or hereafter created, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code together with any amendments, modifications, renewals or extensions thereof.

“Subordinated Loan Documents” shall mean the Subordinated Note, any other agreement, promissory note or other instrument evidencing the Subordinated Loan, any guaranty with respect to the Subordinated Loan, any security agreement or other collateral document securing the Subordinated Loan and all other documents, agreements and instruments now existing or hereafter entered into evidencing or pertaining to all or any portion of the Subordinated Loan.

“Subordinated Note” shall have the meaning ascribed thereto in Recital C.

2. Subordination.

2.1. Subordination of Subordinated Loans to Senior Loans. Borrower covenants and agrees, and Subordinated Lender likewise covenants and agrees that, notwithstanding anything to the contrary contained in any of the Subordinated Loan Documents, the payment of any and all of the Subordinated Loans shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Payment in Full of all Senior Loans. Each holder of the Senior Loans, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have consented to the Subordinated Loans in reliance upon the provisions contained in this Agreement. Until the Senior Loans have been Paid in Full, Borrower shall not make, and Subordinated Lenders shall not accept, any Distribution on account of any Subordinated Loan, other than (i) regularly scheduled payments of capitalized payments-in-kind of accrued interest (but not, for the sake of clarity, any payments in cash) on the Subordinated Loan due and payable on a non-accelerated basis, (ii) payments effected through conversion of indebtedness under the Subordinated Loan to common stock of Borrower (or other qualified capital stock (on terms and conditions reasonably satisfactory to Senior Lenders) of Borrower) and (iii) payments effected through conversion of the indebtedness under the Subordinated Loan to other indebtedness so long as, to the extent Borrower is an obligor thereunder, such convertible indebtedness is subject to a subordination agreement on the same terms and conditions of this Agreement and otherwise satisfactory to Senior Lenders. Subordinated Lender expressly acknowledges and agrees that if Borrower’s failure to make any payments due and payable to the Subordinated Lender under the Subordinated Loan Documents is due solely to this Agreement prohibiting any such payments, such failure shall not constitute a default or event of default under the Subordinated Loan Documents.

2.2. Subordinated Loan Standstill. Until the Senior Loans are Paid in Full, Subordinated Lender shall not, without the prior written consent of Senior Lenders, take any Enforcement Action with respect to the Subordinated Loans.

2.3. Incorrect Payments. If any Distribution on account of the Subordinated Loan not permitted to be made by Borrower or accepted by Subordinated Lender under this Agreement is made to and received by Subordinated Lender, such Distribution shall not be commingled with any of the assets of Subordinated Lender, shall be held in trust by Subordinated Lender for the benefit of Senior Lenders and shall be promptly paid over to the Senior Lenders for application in accordance with the Senior Loan Documents to the payment of the Senior Loans then remaining unpaid, until all of the Senior Loans are Paid in Full.

2.4. Subordination of Liens and Security Interests; Agreement Not to Contest; Agreement to Release any Liens. Subordinated Lender hereby acknowledges, agrees, represents and warrants that none of the Subordinated Loans nor any portion thereof is as of the date hereof, or at any time in the future shall be, secured by any lien or security interest in any of the Collateral, the equity interests in Borrower or any other asset of Borrower, or guaranteed by any Person. Without limiting the foregoing, until the Senior Loans have been Paid in Full, all liens and security interests of Subordinated Lender in the Collateral, if any, shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of Senior Lenders in the Collateral, regardless of the time, manner or order of perfection of any such liens and security interests and regardless of any failure, whether intervening or continuing, of Senior Lenders' liens and security interests to be perfected; provided, however, that each of the parties hereto acknowledges and agrees that the existence of any lien or security interest of Subordinated Lender would constitute an automatic and immediate Event of Default under the Facility Agreement and a breach of this Agreement. Subordinated Lender agrees that it will not at any time contest the validity, perfection, priority or enforceability of the Senior Loans, the Senior Loan Documents, or the liens and security interests of Senior Lenders in the Collateral securing the Senior Loans. In the event that any lien or security interest arises in favor of Subordinated Lender, immediately upon Senior Lenders' request, Subordinated Lender shall or shall cause its agent to promptly execute and deliver to Senior Lenders such termination statements and releases as Senior Lenders shall reasonably request to effect the release of the liens and security interests of Subordinated Lender in any such Collateral.

2.5. Sale, Transfer or other Disposition of Subordinated Loan. The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Loans or any Subordinated Loan Document without the prior written consent of the Senior Lenders. Without limiting the foregoing, if any such sale, assignment, pledge, disposition or other transfer is made in contravention of this Agreement, the subordination effected hereby shall survive such sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Loans, and the terms of this Agreement shall be binding upon the successors and assigns of the Subordinated Lender.

2.6. Legends. Until the termination of this Agreement in accordance with Section 8 hereof, Subordinated Lender will cause to be clearly, conspicuously and prominently inserted on the face of each Subordinated Loan Document, the following legend:

“THIS INSTRUMENT OR OTHER AGREEMENT AND THE INDEBTEDNESS, RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT, DATED AS OF FEBRUARY 8, 2021 (AS AMENDED, RESTATED, SUPPLEMENTED OR MODIFIED FROM TIME TO



TIME, THE “SUBORDINATION AGREEMENT”), BY AND AMONG (I) NEOS THERAPEUTICS, INC. (THE “COMPANY”), (II) THE SUBORDINATED LENDER IDENTIFIED THEREIN, AND (III) DEERFIELD PRIVATE DESIGN FUND III, L.P. AND DEERFIELD PARTNERS, L.P., AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (THE “SENIOR LENDERS”), TO CERTAIN INDEBTEDNESS, RIGHTS AND OBLIGATIONS OF OBLIGORS TO THE SENIOR LENDERS, AND ALL LIENS AND SECURITY INTERESTS OF SENIOR LENDER SECURING THE SAME, ALL AS DESCRIBED IN THE SUBORDINATION AGREEMENT, AND EACH HOLDER AND TRANSFEREE OF THIS INSTRUMENT OR AGREEMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.”

2.7. Liquidation, Dissolution, Bankruptcy. In the event of any Proceeding involving Borrower:

(a) Any Distribution, whether in cash, securities or other property, that would otherwise, but for the terms hereof, be payable or deliverable in respect of the Subordinated Loan, shall be paid or delivered directly to the Senior Lenders (to be held and/or applied by Senior Lenders in accordance with the terms of the Senior Loan Documents) until all of the Senior Loans are Paid in Full. Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor in possession, receiver, trustee, liquidator, custodian, conservator or other Person having authority, to pay or otherwise deliver all such Distributions to Senior Lenders. Subordinated Lender also irrevocably authorizes and empowers Senior Lenders, in the name of Subordinated Lender, to demand, sue for, collect and receive any and all such Distributions.

(b) Subordinated Lender agrees that Senior Lenders may consent to the use of cash collateral or provide financing to the Borrower on such terms and conditions and in such amounts as Senior Lenders, in their sole discretion, may decide and, in connection therewith, the Borrower may grant to Senior Lenders liens and security interests upon all of the property of Borrower, which liens and security interests (i) shall secure payment of the Senior Loans (whether such Senior Loans arose prior to the commencement of any Proceeding or at any time thereafter) and all other financing provided by Senior Lenders during the Proceeding, and (ii) shall be superior in priority to the liens and security interests, if any, in favor of Subordinated Lender on the property of Borrower. Subordinated Lender agrees that it will not object to or oppose a sale or other disposition of any property securing all of any part of the Senior Loans free and clear of security interests, liens or other claims of Subordinated Lender under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code if Senior Lenders have consented to such sale or disposition. Subordinated Lender agrees not to assert any right it may have to “adequate protection” of Subordinated Lender’s interest in any Collateral in any Proceeding. Subordinated Lender waives any claim it may now or hereafter have arising out of Senior Lenders’ election, in any Proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code by the Borrower, as debtor in possession. Subordinated Lender further agrees that it will not seek to participate or participate on any creditors’ committee of the Borrower without Senior Lenders’ prior written consent.

(c) Subordinated Lender agrees to execute, verify, deliver and file any proofs

of claim in respect of the Subordinated Loans requested by Senior Lenders in connection with any such Proceeding and hereby irrevocably authorizes, empowers and appoints Senior Lenders as its agent and attorney-in fact to (i) execute, verify, deliver and file such proofs of claim upon the failure of Subordinated Lender promptly to do so prior to thirty (30) days before the expiration of the time to file any such proof of claim, and (ii) vote such claim in any such Proceeding upon the failure of Subordinated Lender to do so prior to fifteen (15) days before the expiration of the time to vote any such claim; provided, however, that Senior Lenders shall have no obligation to execute, verify, deliver, file and/or vote any such proof of claim. In the event that Senior Lenders vote any claim in accordance with the authority granted hereby, Subordinated Lender shall not be entitled to change or withdraw such vote. Subordinated Lender hereby assigns to Senior Lenders or their nominee (and will, upon request of Senior Lenders, reconfirm in writing the assignment to Senior Lenders or its nominee of) all of its rights under such claims.

(d) The Senior Loans shall continue to be treated as the Senior Loans and the provisions of this Agreement shall continue to govern the relative rights and priorities of Senior Lenders and Subordinated Lender even if all or part of the Senior Loans or the security interests securing the Senior Loans are subordinated, set aside, avoided, invalidated or disallowed in connection with any such Proceeding, and this Agreement shall be reinstated if at any time any payment of any of the Senior Loans is rescinded or must otherwise be returned by any holder of the Senior Loans or any representative of such holder.

3. Modifications.

3.1. Modifications to Senior Loan Documents. Senior Lenders may at any time and from time to time without the consent of Subordinated Lenders, without providing any notice to the Senior Lenders, without incurring liability to Subordinated Lenders and without impairing or releasing the obligations of Subordinated Lender under this Agreement, change the manner or place of payment or alter any of the terms of the Senior Loans, or amend in any manner any agreement, note, guaranty or other instrument evidencing or securing or otherwise relating to the Senior Loans.

3.2. Modifications to Subordinated Loan Documents; Maximum Principal Amount of Subordinated Loan. Until the Senior Loans have been Paid in Full, and notwithstanding anything to the contrary contained in the Subordinated Loan Documents, Subordinated Lender shall not, without the prior written consent of the Senior Lenders, agree to any amendment, modification or supplement to the Subordinated Loan Documents other than, so long as a copy is provided to Senior Lenders, an amendment for the sole purpose of extending the maturity date of the Subordinated Loans. Nothing herein, including the provisions of this Agreement pertaining to subordination of liens on the Collateral, shall be construed to imply Senior Lenders' consent to any Subordinated Loan Document which grants a lien upon any of the Collateral or the making of any other loans or other advances by Subordinated Lender.

4. Waiver of Certain Rights by Subordinated Lender.

4.1. Marshaling. Subordinated Lender hereby waives any rights it may have under applicable law to assert the doctrine of marshaling or to otherwise require Senior Lenders to marshal any property of Borrower or any other guarantor of the Senior Loans for the benefit of Subordinated Lender.

4.2. Rights Relating to Senior Lenders' Actions with respect to the Collateral.

Subordinated Lender hereby waives, to the extent permitted by applicable law, any rights which it may have to enjoin or otherwise obtain a judicial or administrative order preventing any Senior Lender from taking, or refraining from taking, any action with respect to all or any part of the Collateral. Without limitation of the foregoing, Subordinated Lender hereby agrees (a) that it has no right to direct or object to the manner in which Senior Lender enforces its rights and remedies with respect to, or applies the proceeds of the Collateral resulting from the exercise by any Senior Lender of rights and remedies under the Senior Loan Documents to the Senior Loans, and (b) that no Senior Lender has assumed any obligation to act as the agent for Subordinated Lender with respect to the Collateral.

4.3. Rights Relating to Disclosures. Subordinated Lender hereby agrees that Senior Lenders have not assumed any obligation or duty to disclose information regarding Borrower or the Senior Loans to Subordinated Lender, and Senior Lenders shall not have a special or fiduciary relationship to Subordinated Lender. Subordinated Lender hereby fully waives and releases Senior Lenders from any affirmative disclosures which may be required of Senior Lenders under applicable law.

5. Construction. The terms of this Agreement were negotiated among business persons sophisticated in the area of business finance, and accordingly, in construing the terms of this Agreement, no rule or law which would require that this instrument be construed against the party who drafted this instrument shall be given any force or effect.

6. Modification of this Agreement. No modification or waiver of any provision of this Agreement, or consent to any departure by any party from the terms hereof, shall be effective in any event unless the same is in writing and signed by Senior Lenders or such other holder of the Senior Loans and Subordinated Lender or such other holder of the Subordinated Loans, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

7. Further Assurances. Each party to this Agreement promptly will execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

8. Continuing Agreement. This is a continuing agreement and will remain in full force and effect until all of the obligations under the Senior Loan Documents have been Paid in Full after which this Agreement shall terminate without further action on the part of the parties hereto; provided, that if any payment is, subsequent to such termination, recovered from any holder of Senior Loans, this Agreement shall be reinstated. This Agreement will continue to be effective or will be reinstated, as the case may be, if at any time payment of all or any part of the Senior Loan Documents or the obligations thereunder is rescinded or must otherwise be returned by Senior Lenders upon insolvency, bankruptcy, or reorganization of any Obligor or otherwise, all as though such payment had not been made.

9. Notices. Any notice, request or other communication to be given or made under this Agreement shall be in writing. Such notice, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, overnight mail, international courier (confirmed by facsimile), electronic mail or facsimile to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party shall have designated by notice to the other parties:



If to Senior Lenders at:

Deerfield Management Company, L.P.
780 Third Avenue, 37th Floor
New York, NY 10017
Attn: David J. Clark
Email: dclark@deerfield.com

If to Borrower, at:

Neos Therapeutics, Inc.
2940 N. Hwy 360, Suite 400
Grand Prairie, TX 75050
E-mail: reisenstadt@neostx.com
Attention: Richard Eisenstadt

If to Subordinated Lender, at:

Aytu Bioscience, Inc.
373 Inverness Parkway, Suite 206
Englewood, CO 80112
Email: josh.disbrow@aytubio.com
Attention: Josh Disbrow

If mailed, notice shall be deemed to be given five (5) days after being sent, and if sent by personal delivery, email or prepaid courier, notice shall be deemed to be given when delivered.

10. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Senior Lenders, Subordinated Lender and Borrower; provided, however, that neither Subordinated Lender nor Borrower may assign this Agreement in whole or in part without the prior written consent of Senior Lenders or as permitted by Section 2.5. Senior Lenders may, from time to time, without notice to Subordinated Lender, assign or transfer any or all of the Senior Loans or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Senior Loans shall, subject to the terms hereof, be and remain the Senior Loans for purposes of this Agreement, and every permitted assignee or transferee of any of the Senior Loans or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Senior Loans, be entitled to rely upon the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto.

11. No Waiver or Novation. No waiver shall be deemed to have been made by any party to this Agreement of any of its rights under this Agreement unless the same shall be in writing and duly signed by its duly authorized officers, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of any party to this Agreement in any other respect at any time. No executory agreement shall be effective to change, modify or to discharge, in whole or in part, this Agreement, unless such executory agreement is in writing and duly signed by the duly authorized officers of each party to this Agreement.

12. APPLICABLE LAW; CONSENT TO JURISDICTION.

12.1. As part of the consideration and mutual promises being exchanged and given in

connection with this Agreement, the parties hereto agree that all claims, controversies and disputes of any kind or nature arising under or relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, including disputes relating to the negotiations for, inducements to enter into, or execution of, this Agreement, and disputes concerning the interpretation, enforceability, performance, breach, termination or validity of all or any portion of this Agreement shall be governed by the laws of the State of New York without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of New York.

12.2. The parties hereto agree that all claims, controversies and disputes of any kind or nature relating in any way to the enforcement or interpretation of this Agreement or to the parties' dealings, rights or obligations in connection herewith, shall be brought exclusively in the state and federal courts sitting in The City of New York, borough of Manhattan. With respect to any such claims, controversies or disputes, each of the Parties hereby irrevocably:

12.2.1. submits itself and its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action in any court or tribunal other than the aforesaid courts;

12.2.2. waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding (A) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with this Section 12, (B) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (C) to the fullest extent permitted by the applicable law, any claim that (1) the suit, action or proceeding in such court is brought in an inconvenient forum, (2) the venue of such suit, action or proceeding is improper or (3) this Agreement, or the subject matter hereof, may not be enforced in or by such courts; and

12.2.3. WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.

13. Miscellaneous.

13.1. Conflict. In the event of any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of any of the Subordinated Loan Documents, the provisions of this Agreement shall control and govern.

13.2. Headings. The paragraph headings used in this Agreement are for convenience

only and shall not affect the interpretation of any of the provisions hereof.

13.3. Counterparts. This Agreement and any amendment hereto may be executed and delivered in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. In the event that any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a “.pdf” format data file as a defense to the formation or enforceability of a contract, and each party hereto forever waives any such defense.

13.4. Severability. In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

13.5. Relative Rights. This Agreement shall define the relative rights of Senior Lenders and Subordinated Lender. Nothing in this Agreement shall (a) impair, as between Borrower and Senior Lenders, the obligation of Borrower with respect to the payment of the Senior Loans and the Subordinated Loans in accordance with their respective terms, or (b) affect the relative rights of Senior Lenders or Subordinated Lender with respect to any other creditors of Borrower.

13.6. Entire Agreement. This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

13.7. Interpretative Matters. Unless otherwise indicated or the context otherwise requires, (a) all references to Sections, Schedules, Appendices or Exhibits are to Sections, Schedules, Appendices or Exhibits contained in or attached to this Agreement, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, (c) the words “hereof,” “herein” and words of similar effect shall reference this Agreement in its entirety, and (d) the use of the word “including” in this Agreement shall be by way of example rather than limitation.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an instrument executed and delivered under seal, the parties have caused this Agreement to be executed under seal as of the date first written above.

SENIOR LENDERS:

DEERFIELD PRIVATE DESIGN FUND III, L.P.

By: Deerfield Mgmt III, L.P., its General Partner
By: J.E. Flynn Capital III, LLC, its General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD PARTNERS, L.P.

By: Deerfield Mgmt, L.P., its General Partner
By: J.E. Flynn Capital, LLC, its General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

[Signature Page to Subordination Agreement]

SUBORDINATED LENDER:

AYTU BIOSCIENCE, INC.

By: /s/ Joshua Disbrow

Name: Joshua Disbrow

Title: Chief Executive Officer

[Signature Page to Subordination Agreement]

BORROWER:

NEOS THERAPEUTICS, INC.

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Title: Chief Financial Officer

[Signature Page to Subordination Agreement]

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into as of February 8, 2021, by and among AYTU BIOSCIENCE, INC., a Delaware corporation ("Subordinated Creditor"), NEOS THERAPEUTICS, INC., a Delaware corporation ("Neos"), NEOS THERAPEUTICS BRANDS, LLC, a Delaware limited liability company ("NT Brands"), NEOS THERAPEUTICS, LP, a Texas limited partnership ("NT LP"; together with Neos and NT Brands, each a "Borrower" and collectively the "Borrowers"), NEOS THERAPEUTICS COMMERCIAL, LLC, a Delaware limited liability company ("NT Commercial"), PHARMAFAB TEXAS, LLC, a Texas limited liability company ("NT PharmaFab"; and, together with Borrowers, NT Commercial and each other Person that from time to time becomes a "Loan Party" under and as defined in the Senior Credit Agreement or guarantees the Senior Debt), the "Companies", and each individually, a "Company"), and ENCINA BUSINESS CREDIT, LLC, in its capacity as Agent for all Senior Lenders.

RECITALS

A. Borrowers and the other Loan Party Obligors (as defined in the Senior Credit Agreement) party thereto, Agent and Senior Lenders have entered into a Loan and Security Agreement dated as of October 2, 2019 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "Senior Credit Agreement") pursuant to which, among other things, Senior Lenders have agreed, subject to the terms and conditions set forth in the Senior Credit Agreement, to make certain loans and financial accommodations to Borrowers. All of Borrowers' obligations to Agent and Senior Lenders under the Senior Credit Agreement and the other Senior Debt Documents (as hereinafter defined) are guaranteed by the Companies (other than any Company that is a Borrower under and as defined in the Senior Credit Agreement) and secured by liens on and security interests in substantially all of the now existing and hereafter acquired real and personal property of the Companies (the "Collateral").

B. Neos has issued to Subordinated Creditor that certain Unsecured Convertible Promissory Note of even date herewith in the original principal amount of \$5,000,000 (as the same may be amended, restated, supplemented and/or otherwise modified from time to time as permitted hereunder, the "Subordinated Note").

C. As an inducement to and as one of the conditions precedent to the agreement of Agent and Senior Lenders to continue making the loans and other financial accommodations available to Borrowers as contemplated by the Senior Credit Agreement, Agent and Senior Lenders have required the execution and delivery of this Agreement by Subordinated Creditor and the Companies in order to set forth the relative rights and priorities of Agent, Senior Lenders and Subordinated Creditor under the Senior Debt Documents and the Subordinated Note.

NOW, THEREFORE, in order to induce Agent and Senior Lenders to consummate the transactions contemplated by the Senior Credit Agreement, and for other good and valuable

consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings in this Agreement:

"**Agent**" shall mean Encina Business Credit, LLC, as Agent for the Senior Lenders, or any other Person appointed by the holders of the Senior Debt as administrative agent for purposes of the Senior Debt Documents and this Agreement.

"**Bankruptcy Code**" shall mean Chapter 11 of Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

"**Distribution**" shall mean, with respect to any security, indebtedness or obligation, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such security, indebtedness or obligation, (b) any redemption, purchase or other acquisition of such security, indebtedness or obligation by any Person or (c) the granting of any lien or security interest to or for the benefit of the holders of such security, indebtedness or obligation in or upon any property of any Person.

"**Encina Loan Documents**" shall mean the Senior Credit Agreement and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

"**Enforcement Action**" shall mean (a) to take from or for the account of any Company or any guarantor of the Subordinated Debt, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by any Company or any such guarantor with respect to the Subordinated Debt, (b) to initiate or participate with others in any suit, action or proceeding against any Company or any such guarantor to (i) sue for or enforce payment of or to collect the whole or any part of the Subordinated Debt, (ii) commence or join with other Persons to commence a Proceeding, or (iii) commence judicial enforcement of any of the rights and remedies under any Subordinated Debt Document or applicable law with respect to the Subordinated Debt, (c) to accelerate the Subordinated Debt, (d) to exercise any put option or to cause any Company or any such guarantor to honor any redemption or mandatory prepayment obligation under any Subordinated Debt Document or (e) take any action under the provisions of any state or federal law, including, without limitation, the Uniform Commercial Code, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any property or assets of any Company or any such guarantor.

"**Hedging Obligation**" shall mean, with respect to any Company, any liability of such Company to Agent, any Lender or any affiliate of Agent or any Lender under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect such Company against fluctuations in interest rates, currency exchange rates or commodity prices.



"paid in full" or **"payment in full"** shall mean with respect to the Senior Debt, that: (a) all of such Senior Debt (other than contingent indemnification, reimbursement and/or other similar obligations to the extent no claim giving rise thereto has been asserted) has been paid in full in cash, (b) no Person has any further right to obtain any loans or other extensions of credit under the applicable Senior Debt Documents, and (c) any costs, expenses and contingent indemnification obligations which are not yet due and payable but with respect to which a claim has been asserted or may reasonably be expected to be asserted by Agent or any Lender are backed by standby letters of credit (issued by a bank, and in form and substance, acceptable to the Agent) or cash collateralized, in each case in an amount reasonably estimated by the Agent, to be the amount of costs, expenses and contingent indemnification obligations that may become due and payable.

"Permitted Refinancing" shall mean any refinancing or replacement of the Senior Debt under the Encina Loan Documents (or any Permitted Refinancing Senior Debt Documents).

"Permitted Refinancing Senior Debt Documents" shall mean any financing documentation which replaces the Encina Loan Documents (or any Permitted Refinancing Senior Debt Documents) and pursuant to which the Senior Debt under the Encina Loan Documents (or any Permitted Refinancing Senior Debt Documents) is refinanced or replaced, as such financing documentation may be amended, replaced, restated, supplemented or otherwise modified from time to time in compliance with this Agreement.

"Permitted Subordinated Debt Payments" shall mean (i) regularly scheduled payments of capitalized payments-in-kind of accrued interest (but not, for the sake of clarity, any payments in cash) on the Subordinated Note due and payable on a non-accelerated basis, (ii) payments effected through conversion of indebtedness under the Subordinated Note to common stock of the Company (or other qualified capital stock (on terms and conditions reasonably satisfactory to Agent) of the Company) and (iii) payments effected through conversion of the indebtedness under the Subordinated Note to other indebtedness so long as, to the extent any Company is an obligor thereunder, such convertible indebtedness is subject to a subordination agreement on the same terms and conditions of this Agreement and otherwise satisfactory to Agent.

"Person" shall mean any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

"Proceeding" shall mean any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of a Person.



"**Senior Debt**" shall mean (a) all obligations, liabilities and indebtedness of every nature of the Companies from time to time owed to Agent or any Senior Lender under the Senior Debt Documents, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, indirect, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code together with any interest, fees, costs and expenses accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest, fees, costs and expenses are an allowed claim, and (b) all Hedging Obligations.

"**Senior Debt Documents**" shall mean the Encina Loan Documents and, after the consummation of any Permitted Refinancing, the Permitted Refinancing Senior Debt Documents.

"**Senior Default**" shall mean any "Event of Default" under the Senior Debt Documents.

"**Senior Lenders**" shall mean the holders of the Senior Debt.

"**Subordinated Debt**" shall mean all of the obligations of the Companies to Subordinated Creditor evidenced by or incurred pursuant to the Subordinated Debt Documents (including all obligations in respect of the Subordinated Note).

"**Subordinated Debt Documents**" shall mean the Subordinated Note.

2. **Subordination.**

2.1. Subordination of Subordinated Debt to Senior Debt. Each Company covenants and agrees, and Subordinated Creditor by its acceptance of the applicable Subordinated Debt Document (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in such Subordinated Debt Documents, that the payment of any and all of the Subordinated Debt shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the prior payment in full of all of the Senior Debt. Each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Debt in reliance upon the provisions contained in this Agreement.

2.2. Liquidation, Dissolution, Bankruptcy. In the event of any Proceeding involving any Company that owes Subordinated Debt to Subordinated Creditor:

(a) All Senior Debt shall first be paid in full before any Distribution, whether in cash, securities or other property, shall be made to Subordinated Creditor on account of any Subordinated Debt.

(b) Any Distribution which would otherwise, but for the terms hereof, be payable or deliverable in respect of the Subordinated Debt shall be paid or delivered

directly to Agent (to be held and/or applied by Agent in accordance with the terms of the Senior Debt Documents) until all Senior Debt is paid in full. Subordinated Creditor irrevocably authorizes, empowers and directs any debtor, debtor in possession, receiver, trustee, liquidator, custodian, conservator or other Person having authority, to pay or otherwise deliver all such Distributions to Agent. Subordinated Creditor also irrevocably authorizes and empowers Agent, in the name of Subordinated Creditor, to demand, sue for, collect and receive any and all such Distributions.

(c) Subordinated Creditor agrees to execute, verify, deliver and file any proofs of claim in respect of the Subordinated Debt reasonably requested by Agent in connection with any such Proceeding and hereby irrevocably authorizes, empowers and appoints Agent its agent and attorney-in-fact to (i) execute, verify, deliver and file such proofs of claim upon the failure of Subordinated Creditor promptly to do so prior to 30 days before the expiration of the time to file any such proof of claim and (ii) vote such claim in any such Proceeding upon the failure of Subordinated Creditor to do so prior to 15 days before the expiration of the time to vote any such claim; provided, Agent shall have no obligation to execute, verify, deliver, file and/or vote any such proof of claim. In the event that Agent votes any claim in accordance with the authority granted hereby, Subordinated Creditor shall not be entitled to change or withdraw such vote.

2.3. Subordinated Debt Payment Restrictions. Notwithstanding the terms of the Subordinated Note, each Company hereby agrees that it shall not make, and Subordinated Creditor hereby agrees that it will not accept, any Distribution with respect to the Subordinated Debt until all of the Senior Debt is paid in full other than Permitted Subordinated Debt Payments (subject however to subsection 2.2).

2.4. Subordinated Debt Standstill Provisions. Until all of the Senior Debt is paid in full, Subordinated Creditor shall not, without the prior written consent of Agent, take any Enforcement Action with respect to the Subordinated Debt. Notwithstanding the foregoing or any provision of this Agreement to the contrary, Subordinated Creditor may (i) file proofs of claim against any Company in any Proceeding involving such Company, (ii) seek specific performance or injunctive relief to compel a Company to provide financial reporting required under the Subordinated Debt Documents (as in effect on the date hereof as the same may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with this Agreement) so long as it is not accompanied by a claim for monetary damages or remuneration, (iii) to the extent (but only to such extent) that the commencement of a legal action is required to toll the running of any applicable statute of limitations or similar restriction of claims in respect of such legal action (other than actions to enforce Subordinated Creditor's rights to receive payment from the Companies or any rights with respect to any assets of the Companies, and other than initiating or joining with other creditors to initiate a Proceeding), then Subordinated Creditor may take such legal action, and (iv) declare and send notice of default to a Company (so long as not accompanied by a demand for payment). Any Distributions or other proceeds of any Enforcement Action obtained by Subordinated Creditor shall in any event be held in trust by it for the benefit of Agent and Senior Lenders and promptly paid or delivered to Agent for the benefit of Senior Lenders in the form received until all of the Senior Debt is paid in full.

2.5. Incorrect Payments. If any Distribution on account of the Subordinated Debt not permitted to be made by a Company or accepted by Subordinated Creditor under this Agreement is received by Subordinated Creditor, such Distribution shall not be commingled with any of the assets of Subordinated Creditor, shall be held in trust by Subordinated Creditor for the benefit of Agent and Senior Lenders and shall be promptly paid over to Agent for application (in accordance with the Senior Debt Documents) to the payment of the Senior Debt then remaining unpaid, until all of the Senior Debt is paid in full.

2.6. Subordination of Liens and Security Interests; Agreement Not to Contest; Sale of Collateral; Release of Liens. Until all of the Senior Debt has been paid in full, Subordinated Creditor shall not obtain any liens or security interests in any Collateral or any other assets of any Company or other guarantor of the Subordinated Debt. To the extent Subordinated Creditor obtains any such liens or security interest in violation of this Agreement, such liens and security interests which may exist shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of Agent and Senior Lenders in the Collateral, regardless of the time, manner or order of perfection of any such liens and security interests and regardless of the validity, perfection or enforceability of such liens and security interests of Agent. Subordinated Creditor agrees that it will not at any time contest the validity, perfection, priority or enforceability of the Senior Debt, the Senior Debt Documents, or the liens and security interests of Agent and Senior Lenders in the Collateral securing the Senior Debt. Until all of the Senior Debt has been paid in full, Subordinated Creditor shall not obtain any guaranty of the Subordinated Debt by any Person unless such Person executes and delivers a joinder to this Agreement in form and substance reasonably satisfactory to Agent to become party to this Agreement as a Company. In the event that a Company desires to sell any of the Collateral and Agent consents to such sale, Subordinated Creditor shall be deemed to have consented to such sale and such sale shall be free and clear of any liens and security interests of Subordinated Creditor in such Collateral (and in the event that such sale includes the equity interests of Initial Borrower, Initial Borrower shall be immediately released by Subordinated Creditor from its obligations in respect of the Subordinated Debt upon the consummation of such sale) and any purchaser of any Collateral may rely on this Agreement as evidence of Subordinated Creditor's consent to such sale and that such sale is free and clear of any liens and security interests of Subordinated Creditor in such Collateral (and, in the case of a sale of equity interests of a Company other than Holdings, of the release of such Company from its obligations in respect of the Subordinated Debt). In the event that Subordinated Creditor obtains any liens or security interests in the Collateral or other assets, or any guaranty of the Subordinated Debt by any Person other than Holdings, Subordinated Creditor shall promptly execute and deliver to Agent such termination statements and releases as Agent shall request to effect the release of the liens and security interests in such Collateral and/or such guaranty. In furtherance of the foregoing, Subordinated Creditor hereby irrevocably appoints Agent its attorney-in-fact, with full authority in the place and stead of Subordinated Creditor and in the name of Subordinated Creditor or otherwise, to execute and deliver any document or instrument which Subordinated Creditor may be required to deliver pursuant to this subsection 2.6.

2.7. Sale, Transfer or other Disposition of Subordinated Debt. Subordinated Creditor shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Debt or its Subordinated Note: (i) without giving prior written notice of such action to Agent, (ii) to any Person other than an affiliate of Subordinated Creditor, and (iii) unless, prior to the consummation of any such action, the transferee thereof shall execute and deliver to Agent

a counterpart signature page to this Agreement, an agreement joining such transferee as a party to this Agreement as a Subordinated Creditor or an agreement substantially identical to this Agreement, providing for the continued subordination of the Subordinated Debt to the Senior Debt as provided herein and for the continued effectiveness of all of the rights of Agent and Senior Lenders arising under this Agreement. Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Debt, and the terms of this Agreement shall be binding upon the successors and assigns of Subordinated Creditor, as provided in Section 9 hereof.

2.8. Legends. Until the termination of this Agreement in accordance with Section 15 hereof, Subordinated Creditor will cause each Subordinated Debt Document to clearly and conspicuously state that it is subject to the terms of this Subordination Agreement and that any transferee thereof shall be bound hereby.

2.9. Obligations Hereunder Not Affected. All rights and interests of Senior Lenders and Agent hereunder, and all agreements and obligations of Subordinated Creditor and Companies hereunder, shall remain in full force and effect irrespective of (a) any lack of validity or enforceability of any document evidencing any of the Senior Debt; (b) any change in the time, manner or place of payment of, or any other term of, all or any of the Senior Debt, or any other permitted amendment or waiver of or any release or consent to departure from any of the Senior Debt Documents; any exchange, release or non-perfection of any collateral for all or any of the Senior Debt; (c) any failure of any Senior Lender or Agent to assert any claim or to enforce any right or remedy against any other party hereto under the provisions of this Agreement or any Senior Debt Document other than this Agreement; (d) any reduction, limitation, impairment or termination of the Senior Debt for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and Companies and Subordinated Creditor hereby waive any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of invalidity, illegality, non-genuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Senior Debt; and (e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Companies in respect of the Senior Debt or Subordinated Creditor in respect of this Agreement. Subordinated Creditor acknowledges and agrees that Senior Lenders and Agent may in accordance with the terms of the Senior Debt Documents, without notice or demand and without affecting or impairing Subordinated Creditor's obligations hereunder, (i) modify the Senior Debt Documents at any time without notice to or the consent of Subordinated Creditor; (ii) take or hold security for the payment of the Senior Debt and exchange, enforce, foreclose upon, waive and release any such security; (iii) apply such security and direct the order or manner of sale thereof as Agent and Senior Lenders in their sole discretion, may determine; (iv) release and substitute one or more endorsers, warrantors, borrowers or other obligors; and (v) exercise or refrain from exercising any rights against any Company or any other Person. The Senior Debt shall continue to be treated as Senior Debt and the provisions of this Agreement shall continue to govern the relative rights and priorities of Agent and Senior Lenders and Subordinated Creditor even if all or part of the Senior Debt or the security interests securing the Senior Debt are subordinated, set aside, avoided, invalidated or disallowed.

3. **Modifications to Subordinated Debt Documents.** Until all of the Senior Debt has been paid in full, and notwithstanding anything to the contrary contained in the Subordinated Note, Companies and Subordinated Creditor shall not, without the prior written consent of Agent, agree to any amendment, modification or supplement to any Subordinated Debt Document the effect of which is to (a) increase the maximum principal amount of the Subordinated Debt or rate of interest (or required cash pay rate of interest) on any of the Subordinated Debt, (b) change the dates upon which payments of principal or interest on the Subordinated Debt are due to an earlier date, (c) change any redemption or prepayment provisions of the Subordinated Debt, (d) alter the subordination provisions with respect to the Subordinated Debt, including, without limitation, subordinating the Subordinated Debt to any other Indebtedness, (e) take any liens or security interests in any assets of any Company or any guarantor of the Subordinated Debt, (f) change or add any default or event of default or any covenant with respect to the Subordinated Debt, or (g) change or amend any other term of the Subordinated Debt Documents if such change or amendment would (i) result in a Senior Default, increase the obligations of any Company or any guarantor of the Subordinated Debt or (ii) confer additional material rights on Subordinated Creditor or any other holder of the Subordinated Debt in a manner adverse to the Senior Lenders.

4. **Representations and Warranties of Subordinated Creditor.** Subordinated Creditor hereby represents and warrants to Agent and Senior Lenders that as of the date hereof: (a) Subordinated Creditor is a corporation duly formed and validly existing under the laws of the State of Delaware; (b) Subordinated Creditor has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action; (c) the execution of this Agreement by Subordinated Creditor will not violate or conflict with the organizational documents of Subordinated Creditor, any material agreement binding upon Subordinated Creditor or any law, regulation or order or require any consent or approval which has not been obtained; (d) this Agreement is the legal, valid and binding obligation of Subordinated Creditor, enforceable against Subordinated Creditor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles; and (e) Subordinated Creditor is the sole owner, beneficially and of record, of the Subordinated Debt Documents and the Subordinated Debt evidenced thereby.

5. **Subrogation; Recovery.** Subject to the payment in full of all of the Senior Debt, Subordinated Creditor shall be subrogated to the rights of Agent and Senior Lenders to receive Distributions with respect to the Senior Debt until the Subordinated Debt is paid in full. If Agent or any Senior Lender is required to disgorge any proceeds of Collateral, payment or other amount received by such Person (whether because such proceeds, payment or other amount is invalidated, declared to be fraudulent or preferential or otherwise) or turn over or otherwise pay any amount (a "Recovery") to the estate or to any creditor or representative of a Company or any other Person, then the Senior Debt shall be reinstated (to the extent of such Recovery) as if such Senior Debt had never been paid and to the extent Subordinated Creditor has received proceeds, payments or other amounts to which Subordinated Creditor would not have been entitled under this Agreement had such reinstatement occurred prior to receipt of such proceeds, payments or other amounts, Subordinated Creditor shall turn over such proceeds, payments or other amounts to Agent for reapplication to the Senior Debt. A Distribution made pursuant to this Agreement to Agent or Senior Lenders which otherwise would have been made to Subordinated Creditor is not, as

between the Companies and Subordinated Creditor, a payment by the Companies to or on account of the Senior Debt.

6. **Modification.** Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by Agent and Subordinated Creditor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

7. **Further Assurances.** Each party to this Agreement promptly will execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

8. **Notices.** Unless otherwise specifically provided herein, any notice delivered under this Agreement shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied, sent by electronic mail (to the extent an electronic mail address is listed below) or sent by overnight courier service or certified or registered United States mail and shall be deemed to have been given (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted on a business day before 4:00 p.m. (Chicago time) or, if not, on the next succeeding business day; (c) if delivered by overnight courier, one business day after delivery to such courier properly addressed; or (d) if by United States mail, four business days after deposit in the United States mail, postage prepaid and properly addressed.

Notices shall be addressed as follows:

If to Subordinated Creditor:

Aytu Bioscience, Inc.
373 Inverness Parkway, Suite 206
Englewood, CO 80112
Attention: Joshua Disbrow
Email: josh.disbrow@aytubio.com

with a copy to (which shall not constitute notice):

Dorsey and Whitney LLP
111 South Main Street, Suite 2100
Salt Lake City, Utah 84111
Attention: Ken Logsdon
Email: logsdon.ken@dorsey.com

If to any Company:

Neos Therapeutics, Inc.
2940 N. Hwy 360, Suite 400
Grand Prairie, Texas 75050
Attention: Richard Eisenstadt
Email: reisenstadt@neostx.com

with a copy to (which shall not constitute notice):

Goodwin Procter LLP
53 State Street
Boston, Massachusetts 02109
Attention: Mark Smith
Email: marksmith@goodwinlaw.com

If to Agent or Senior Lenders:

Encina Business Credit, LLC
123 N Wacker, Suite 2400
Chicago, Illinois 60606
Attention: Neos Account Manager
Email: jemie@encinabc.com

with a copy to (which shall not constitute notice):

Goldberg Kohn Ltd.
55 E. Monroe, Suite 3300
Chicago, Illinois 60603
Attention: Jeffrey Dunlop
Email: jeffrey.dunlop@goldbergkohn.com

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 8.

9. **Successors and Assigns; Permitted Refinancing.** This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Agent, Senior Lenders, Subordinated Creditor and the Companies. Senior Lenders may, from time to time, without notice to Subordinated Creditor, assign or transfer any or all of the Senior Debt or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Senior Debt shall, subject to the terms hereof, be and remain Senior Debt for purposes of this Agreement, and every permitted assignee or transferee of any of the Senior Debt or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Senior Debt, be entitled to rely upon and be the third party beneficiary of the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto. Subordinated Creditor agrees that any party that consummates a Permitted Refinancing may rely on and enforce this Agreement. Subordinated Creditor further agrees that it will, at the request of Agent, enter into an agreement, in the form of this Agreement, mutatis mutandis, with the party that consummates the Permitted Refinancing; provided, that the failure of Subordinated Creditor

to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

10. **Relative Rights.** This Agreement shall define the relative rights of Agent, Senior Lenders and Subordinated Creditor. Nothing in this Agreement shall (a) impair, as among the Companies, Agent and Senior Lenders and as between the Companies and Subordinated Creditor, the obligation of the Companies with respect to the payment of the Senior Debt and the Subordinated Debt in accordance with their respective terms or (b) affect the relative rights of Agent, Senior Lenders or Subordinated Creditor with respect to any other creditors of any Company.

11. **Conflict.** In the event of any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of the Subordinated Debt Documents, the provisions of this Agreement shall control and govern.

12. **Headings.** The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This document may be executed and delivered electronically, via telecopy, "portable document format" or ".pdf" sent by electronic email or otherwise, and any such electronic execution and delivery shall be equally effective as the manual execution and physical delivery of a counterpart to this Agreement.

14. **Severability.** In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

15. **Continuation of Subordination; Termination of Agreement.** This Agreement shall remain in full force and effect until the payment in full of all of the Senior Debt after which this Agreement shall terminate without further action on the part of the parties hereto; provided, that if any payment is, subsequent to such termination, recovered from any holder of Senior Debt, this Agreement shall be reinstated; provided, further that a Permitted Refinancing shall not be deemed to be payment in full of all of the Senior Debt.

16. **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.**

17. **CONSENT TO JURISDICTION.** SUBORDINATED CREDITOR AND EACH COMPANY HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR

PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. SUBORDINATED CREDITOR AND EACH COMPANY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. SUBORDINATED CREDITOR AND EACH COMPANY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUBORDINATED CREDITOR AND SUCH COMPANY AT THEIR RESPECTIVE ADDRESSES SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE 10 DAYS AFTER THE SAME HAS BEEN POSTED.

18. WAIVER OF JURY TRIAL. SUBORDINATED CREDITOR, EACH COMPANY AND AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE SUBORDINATED DEBT DOCUMENTS OR ANY OF THE SENIOR DEBT DOCUMENTS. SUBORDINATED CREDITOR, EACH COMPANY AND AGENT ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE SENIOR DEBT DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. SUBORDINATED CREDITOR, EACH COMPANY AND AGENT WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

[Signature pages follow]

IN WITNESS WHEREOF, Subordinated Creditor, the Companies and Agent have caused this Agreement to be executed as of the date first above written.

SUBORDINATED CREDITOR:

AYTU BIOSCIENCE, INC.

By: /s/ Joshua Disbrow

Title: Chief Executive Officer

Signature Page to Subordination Agreement

COMPANIES:

NEOS THERAPEUTICS, INC.

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Its: Chief Financial Officer

NEOS THERAPEUTICS BRANDS, LLC

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Its: Chief Financial Officer

NEOS THERAPEUTICS, LP

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Its: Chief Financial Officer

NEOS THERAPEUTICS COMMERCIAL,
LLC

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Its: Chief Financial Officer

NEOS THERAPEUTICS, LP

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Its: Chief Financial Officer



PHARMAFAB TEXAS, LLC

By: /s/ Richard Eisenstadt

Name: Richard Eisenstadt

Its: Chief Financial Officer

Signature Page to Subordination Agreement

AGENT:

ENCINA BUSINESS CREDIT, LLC,
as Agent

By: /s/ Jean R. Elie

Name: Jean R. Elie

Title: Authorized Signatory

Signature Page to Subordination Agreement
